

Booklet control  
number:

Write your exam  
number here:

**Civil Procedure II**  
The University of Oklahoma College of Law  
Course 5203-600  
Spring 2016  
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 30 minutes of Part Two 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 question(s) and organize your thoughts about how to respond. You may, however, reference notes and materials, make notes on this exam sheet and/or scratch paper, and outline your response (which I encourage).
3. Part Two is an open-book exam. You may use any notes or books you like. You may not use or reference electronic or interactive resources including, but not limited to, the internet, iPads, and cell phones. You may, of course, use a laptop to write your exam, but you may not reference files stored thereon during the examination session. No materials may be shared during the exam.
4. **Do not turn the page until instructed to begin.**
5. You will not receive credit unless you return this booklet at the end of the period with your exam number written above.
6. 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.
7. 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.
8. 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.
9. 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.
10. You may not copy, transcribe, or distribute the material in this booklet or attempt to do 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. Organization counts.
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. **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.
15. **Computers:** Please clearly label your answers to each section, starting a new "question" in ExamSoft for each subpart.
16. Assume every state has a statutory long-arm provision that reaches to the furthest extent permitted under federal constitutional due process.
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.

When chart-topper Shed Shmeran eloped with rock-diva Allie Auldin, the tabloids went nuts. Two young, gorgeous, and seemingly untamable pop stars making a sudden lifetime commitment? Celebrigossip doesn't get better than that.

Shed and Allie appeared beaming and loving on magazine cover after magazine cover. They talked openly about the challenges they faced making the money the same way and competing on the charts. Four cities, two planes the same day would be tough on any relationship, they admitted. But they always found time for take-away pizza and singing out Aretha.

And then the news broke. Allie had cheated on Shed with Pyll Poran, music producer to both Shed and Allie. Although Shed never saw Pyll as a threat, he apparently was. The couple and their entourages were partying at a swanky New York City hotel-rooftop bar to celebrate Shed's latest record drop when Allie and Pyll left together. Poor Shed. He figured they'd gone off to overdub some backing vocals.

More celebrity gossip magazines flew off the shelves, with headlines like "Who will get the \$5 million Nashville mansion?" "What's Going to Happen to Shed's Contract with Cold Cash Records?" and "Secrets Revealed About New Jersey Producer at Heart of Pop Stars' Split."

Shed and Allie kept their heads down and steadfastly refused to talk to the press. An unnamed "close to Shed" source confirmed that Shed had, indeed, moved out of the couple's Nashville, Tennessee home. Photos of movers at the mansion confirmed the report. Thereafter, a "hotel insider" at the Manhattan hotspot Hotel Tribeca broke the story that Shed had moved into one of the hotel's long-term rentals. Shed was soon seen out and about in Tribeca, having coffee with his mom and beer with his brother. He was keeping the family close, and trying to keep the tabloids at arms length. A "friend of Shed" told tabloids that Shed wasn't sure what his next move would be, but he was checking out lofts in London, Los Angeles, and Brooklyn.

While Shed wasn't speaking to the press, he wasn't entirely silent either. He filed a lawsuit against Pyll in the Supreme Court of the State of New York, the state's trial-level court of general jurisdiction. In his complaint, Shed sought \$1 million in damages, claiming: (i) intentional infliction of emotional distress and (ii) negligent infliction of emotional distress. Pyll sought to dismiss the suit for lack of personal jurisdiction, noting (as the tabloids had also pointed out) that he was a New Jersey citizen. Judge Wanda Winkerson denied Pyll's motion.

Thereafter, Pyll sought to remove the case to the U.S. District Court for the Southern District of New York. The suit landed before Judge Jimmy Jagerson, who granted removal.

Pyll then sought to bring Cold Cash Records into the litigation, arguing that the record label had an obligation, by contract, to indemnify him for any damages arising out of the course of his employment. Pyll took the position that his relationship with Allie was within the scope of his employment as her producer and part of his job to "keep the talent happy."

Cold Cash is incorporated in Delaware. The Cold Cash website lists the company's headquarters as Miami, Florida, and that is where Cold Cash holds its annual board meetings and company retreats. The day-to-day operations of Cold Cash are largely run out of the record label's Manhattan office in New York. That's where the CEO and the bulk of the label's employees work, including Pyll. Manhattan is also home to the company's only recording studio.

Cold Cash opposed being added to the Shed litigation, arguing the court lacked personal jurisdiction and subject matter jurisdiction. Jagerson denied both motions.

Once joined, Cold Cash raised a claim against Pyll, arguing the Pyll violated the "morals clause" in his employment contract, rendering its contractual obligations (including the indemnity provision) null and void. That is, by having an affair with Allie, Pyll acted without "due regard to the public conventions and morals" and brought "public hatred, contempt, scorn or ridicule" upon himself, making the indemnity obligation void.

Shed thereafter asserted the following claims against Cold Cash: (i) for negligent retention and supervision of its employee, Pyll, and (ii) for a declaratory judgment that Shed was no longer bound by his record deal with Cold Cash.

Over objections by the affected parties, Judge Jagerson allowed the new claims by both Cold Cash and Shed to go forward.

The Shed litigation may have been bothersome, but Cold Cash was having a banner year. Sales of Shed's latest album, *Y*, were surging. And not just iTunes sales. Real, honest-to-goodness vinyl was jumping off the shelves.

DJ Darth Dader bought *Y* on vinyl and played it while hosting a set at the renowned Phoenix, Arizona club Big Bikanel. Half-way through Shed's plaintive *Won't* (sped up and backed by a techno beat), Darth noticed there was something wrong with his Vestax PDX 2000 M.II turntable. The *Y* album was melting all over it. Darth tried to grab the record and pull it off, but the damage was done. His turntable was a lost cause. Darth managed to finish out his set with his remaining turntable. But he was furious.

Darth discovered that Violet Vinyl manufactured the liquefying LP. A small outfit headquartered in Billings, Montana, Violet Vinyl printed all of Cold Cash's vinyl records. Cold Cash would place an order with Violet Vinyl, and Violet Vinyl would ship the records to Cold Cash's New York City office for distribution. Darth further discovered that the vinyl used to make the *Y* records was of a non-standard quality, prone to melting in even remotely warm conditions, and particularly apt to rapidly deteriorate in hot and humid club environments.

Darth, a Phoenix resident, filed a putative class action suit against Violet Vinyl in the U.S. District Court for the District of Arizona on behalf of the 40,000 customers nationwide who had purchased the defective *Y* on vinyl and suffered damage to their turntables, estimating damages of \$32 million. The case landed in front of Judge Mary Monarch.

Violet immediately moved to dismiss for lack of personal jurisdiction. Judge Monarch denied the motion.

Violet also opposed class action certification, noting that DARTH did not have counsel and was proceeding *pro se*. DARTH argued that he was entitled to pursue the lawsuit without representation pursuant to Ariz. Stat. § 64-452, Personal Responsibility for Everything is Smarter and Effective (“PRO SE”), which authorizes class action representatives to litigate *pro se* – a statute that was passed after extensive negotiations in the Arizona legislature over the wisdom of reducing barriers to low-stakes class action lawsuits. Judge Monarch certified the class.

### QUESTION

Did the judges make the rights calls?

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

Subpart A: Discuss any issues concerning Pyll Poran’s motion to dismiss for lack of personal jurisdiction.

Subpart B: Discuss any issues concerning removal of Shed Shmeran’s case to federal court.

Subpart C: Discuss any issues concerning Pyll Poran’s addition of Cold Cash.

Subpart D: Discuss any issues concerning Cold Cash’s claim against Pyll Poran.

Subpart E: Discuss any issues concerning Shed Shmeran’s claims against Cold Cash.

Subpart F: Discuss any issues concerning Violet Vinyl’s motion to dismiss for lack of personal jurisdiction.

Subpart G: Discuss any issues concerning certification of DJ DARTH DADER’s class.

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

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:**

AA: Allie Aulding

BB: Big Bikanel

CC: Cold Cash Records

DD: DJ Darth Dader

JJ: Judge Jimmy Jagerson

MM: Judge Mary Monarch

PP: Pyll Poran

SS: Shed Shmeran

VV: Violet Vinyl

WW: Judge Wanda Winkerson

**END OF EXAMINATION**