

Monterey College of Law

Civil Procedure Final Examination

Spring 2021

Prof. I. Adams

Instructions:

There are three (3) questions in this examination. You will be given four (4) hours to complete the examination.

Your answer should demonstrate your ability to analyze the facts in the question, to tell the difference between material facts and immaterial facts, and to discern the points of law and facts upon which the case turns. Your answer should show that you know and understand the pertinent principles and theories of law, their qualifications and limitations, and their relationships to each other. Your answer should evidence your ability to apply the law to the given facts and to reason in a logical, lawyer-like manner from the premises you adopt to a sound conclusion. Do not merely show that you remember legal principles; instead, try to demonstrate your proficiency in using and applying them. If your answer contains only a statement of your conclusions, you will receive little credit. State fully the reasons that support your conclusions and discuss all points thoroughly. Your answer should be complete, but you should not volunteer information or discuss legal doctrines that are not pertinent to the solution of the problem.

Question One

A Homeowner, by himself, built the walls of a garage in his home. Because the Homeowner did not know how to build the roof, he hired Contractor. Contractor hired Worker, and both started the roof construction. One day before the end of construction, the entire garage collapsed, and Homeowner, Contractor, and Worker were injured.

Homeowner filed suit against Contractor in federal court claiming \$100,000 in property damages. Contractor denied negligence and asserted that Homeowner was contributorily negligent. At trial, the judge found that Contractor was not negligent and final judgment on the merits was entered.

Suffered a back injury, Worker sued Homeowner. Subsequently, Homeowner moved to dismiss the suit because Contractor was an indispensable party and had not been named a defendant. The court denied the Homeowner's motion to dismiss.

Later, Contractor petition to intervene as a plaintiff, which the court granted. Contractor sought \$80,000 for property damage and personal injury. Homeowner contended that Contractor's claim against Homeowner was barred by claim preclusion.

Also, Homeowner counterclaimed against the Contractor for \$150,000 in personal injury. Contractor maintained that Homeowner's claim against Contractor was barred by claim preclusion.

Finally, Worker asserted a cross-complaint against Contractor. Contractor asserted that the collateral estoppel doctrine bars worker's cross-complaint. All suits are filed in state X, which follows FRCP.

- 1- Did the court err in denying the Homeowner's motion to dismiss because Contractor was an indispensable party?
- 2- How should the court rule on Homeowner contention that Contractor's claim against Homeowner was barred by claim preclusion?
- 3- How should the court rule on Contractor assertion that Homeowner's claim against Contractor was barred by claim preclusion?
- 4- How should the court rule on Contractor claim that the collateral estoppel doctrine bars worker's cross-complaint?

Question Two

Dave was piloting a private plane in which Pam was a passenger. Due to unknown reasons, the plane crashed, and Pam was injured.

In April, Pam commenced a lawsuit against Dave for negligence. Dave answered, denying any wrongdoing.

During discovery, Dave filed a motion asking the court to order Pam to submit for physical and mental examinations. The court granted the motion.

In July, Pam served Dave with notice to depose the co-pilot, Mike. Dave objected, stating that Mike should not be deposed because he was not a party. The court overruled the objection.

In October, two weeks before trial, Pam filed a demand for a jury trial. Dave filed a motion to strike the demand, which the court denied.

After deliberation, the jury returned a verdict for Pam. As a result, Dave moved for a judgment as a matter of law, which Pam opposed. The court denied Dave's motion.

- 1- Did the court err in ordering Pam to submit to medical and psychological examinations? Discuss
- 2- Did the court err in overruling the objection regarding Mike's deposition? Discuss
- 3- Did the court err in granting Pam's motion for a jury trial? Discuss
- 4- Did the court err denying Dave's motions for judgment as a matter of law? Discuss

### Question Three

CovidCure (CC), a therapeutic developed by PharmaTech to combat the novel Coronavirus. The company advertised that CC would cure people infected with the virus and prevent healthy people from ever getting sick from the virus. As a result, thousands of people took CC.

After taking CC, thinking that she is protected, Paris went on a cruise. There, she became sick after contracting the virus.

Paris, concerned about the efficacy of CC, created a blog to tell her story. Through her blog, Paris learned that hundreds of people took CC and, nonetheless, got sick with the virus.

Paris filed a class action suit against PharmaTech and asked the federal court to certify a class consisting of:

1. All persons who took CC as a therapeutic;
2. All persons who took CC as a preventative; and
3. The estate of all persons who died from the virus while on CC.

The federal district court certified the class, and PharmaTech appealed. The court of appeals refused to hear the case.

- 1- Was it proper for the federal district court to certify the class? Discuss
- 2- Was it proper for the court of appeals to refuse to review the class certification? Discuss.

1)

Question 1

**1. Did the Court Err in Denying the Homeowner's Motion to Dismiss Because the Contractor Was an Indispensable Party?**

The issue here is whether or not Contractor is an indispensable party.

**Indispensable Party**

A party is indispensable when they are a necessary party in a lawsuit, and it is not feasible to join them. Their participation is required for jurisdiction, or the purpose of rendering judgement. In the absence of an indispensable party, the court must, in equity and good conscience, dismiss the lawsuit.

**Necessary**

To determine whether a party is indispensable, courts will consider: 1) whether the party's interests will be harmed by their absence, 2) whether they have an interest which would cause another party to the case to be subjected to multiple obligations, and 3) whether the court can provide complete relief to the plaintiff without the party's presence.

**Will Contractor's interests be harmed by his absence?**

Here, Homeowner is seeking to dismiss the case because Contractor is an indispensable party. Because Contractor was already found in previous litigation pertaining to the same transaction to be not negligent, his interests will not be harmed by being absent from Worker's litigation against Homeowner.

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**Does Contractor have an interest which would cause another party to the case to be subjected to multiple obligations?**

As mentioned above, Contractor was found to be not negligent in previous litigation pertaining to the same transaction, so he has no interest which would cause either Homeowner or Worker to be subject to multiple obligations.

**Can the court provide complete relief to the plaintiff without Contractor's presence?**

Because he suffered a back injury when the roof collapsed, Worker is seeking relief from Homeowner. There is no reason why complete relief could not be granted to Worker in this case without Contractor's presence.

**Feasibility**

If a party is found to be necessary, the court will then need to examine if it is feasible to join them. To determine this, the court will determine whether it can exercise personal and subject matter jurisdiction over the party. Joinder of a necessary party will not be considered feasible if it destroys diversity.

**Conclusion**

Because Contractor does not meet the criteria for being necessary to to the case, the court did not find him to be indispensable and did not err in denying Homeowner's request.

Since Homeowner's motion to dismiss the case due to an indispensable party was denied, Homeowner make seek to implead Contactor to be a co-defendant so Contractor can contribute to any damages or provide immunity.

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## 2. How Should the Court Rule on Homeowner's Contention that Contractor's Claim Against Homeowner was barred by Claim Preclusion?

The issue here is whether or not the first case, in which Homeowner sued Contractor for negligence, precludes Contractor from filing a claim against Homeowner in the second case.

### Full Faith and Credit Clause

Under Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause states that a valid judgment entered by a federal or state court must be enforced by every other state or federal court.

### Claim Preclusion

The doctrine of *Res Judicata*, also known as claim preclusion, prevents a party from re-litigating a claim once a court has issued a final judgment on the merits of that claim. For Claim Preclusion to apply, it must involve the same claim, the same parties, and a valid final judgment issued on the merits.

**Valid** - a judgment is valid as long as it does not lack Subject Matter Jurisdiction, Personal Jurisdiction, is not based on fraud, and the notice to the defendant conformed to Due Process requirements.

**Final** - a judgment is final when there is nothing left for the trial court to do.

**On the Merit** - All judgments are on the merit unless they are based on lack of Personal or Subject Matter Jurisdiction, improper venue, indispensable parties, or statute of limitation.

### Same Claim

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Here, case two stems from the same transaction and occurrence as the one litigated in case one. Both cases are litigating about damages to persons and properties stemming from the same incident of the roof collapsing on Homeowner, Contractor, and Worker.

However, in case one, Contractor did not assert any claims against Homeowner. He was merely a defendant, and asserted in his defense that he was not negligent.

### **Same Parties**

Here, the parties are the same. Homeowner and Contractor were both parties in case one.

### **Valid, Final Judgement on the Merits.**

In case one, at trial, the judge found that Contractor was not negligent and entered final judgment on the merits.

Because the first necessary element of same claim was not met, Claim Preclusion will not bar Contractor's claim against Homeowner in case two.

However, Contractor's claim will be precluded because he waived his right to by not bringing it up in case one.

### **Compulsory Counterclaim**

A compulsory counterclaim is a claim made against the Plaintiff that arises from the same transaction or occurrence as the Plaintiff's claim. The claim is compulsory in that it must be raised in the Defendant's answer, or it is waived.

Because Contractor did not file a counterclaim against Homeowner for property damage and personal injury in case one, he waived his right to claim these in case two.

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## Conclusion

The court should not grant Homeowner's contention that Contractor's claim against him should be barred by claim preclusion, but it should bar Contractor's claim because he did not file it as a counterclaim in case one.

### 3. How Should the Court Rule on Contractor's Assertion that Homeowner's Claim Against Contractor was Barred by Claim Preclusion?

The issue here is whether the first case in which Homeowner sued Contractor for property damages precludes him from suing Contractor in case two for personal injury.

## Full Faith and Credit Clause

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### **Same Claim**

Here, case two stems from the same transaction and occurrence as the one litigated in case one. Both cases are litigating about damages to persons and properties stemming from the same incident of the roof collapsing on Homeowner, Contractor, and Worker. The claim is the same.

### **Same Parties**

Here, the parties are the same. Homeowner and Contractor were both parties in case one.

### **Valid, Final Judgement on the Merits.**

In case one, at trial, the judge found that Contractor was not negligent and entered final judgment on the merits.

Because all of the elements necessary for claim preclusion have been met, the court may find in favor for Contractor and preclude that Homeowner is barred from bringing his claim against him in case two.

### **Majority View**

The majority view in claim preclusion is that all claims must be brought in the first case, and are precluded from being brought up again.

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## Minority View

The minority view in claim preclusion, held by some states, grants the claim to be brought up again if the Plaintiff is asserting different rights in the second case. This is also called the *Primary Rights Theory*.

## Conclusion

Because Homeowner asserted property damages in his first case against Contractor and personal injury in his second case against him, how the court rules on whether Homeowner should be precluded from bringing his claim against Contractor up again will depend on whether or not they employ the majority or minority view. This will depend on the jurisdiction. Because case one was filed in federal court, and there is no federal question in issue, it will depend on the state in which the federal court sits, as the federal court will adopt the rule of that state.

### 4. How Should the Court Rule on Contractor's Claim that the Collateral Estoppel Doctrine Bars Worker's Cross Complaint?

The issue here is whether Worker's cross complaint against Contractor should be barred by issue preclusion.

## Cross Complaint

A cross complaint is a type of pleading that asserts a claim against any of the parties suing the person making the complaint, or against anyone else involved in the same controversy having an interest in the same property that is the subject of the lawsuit. It must arise from the same transaction or occurrence as the underlying action, but it is not compulsory. It can be asserted in the first action, or brought up separately in another action.

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Here, Worker is filing a cross complaint against Contractor for a matter arising from the same transaction and occurrence in case one, so he has a valid counterclaim.

### **Full Faith and Credit Clause**

Under Article IV, Section 1 of the United States Constitution, the Full Faith and Credit Clause states that a valid judgment entered by a federal or state court must be enforced by every other state or federal court.

### **Collateral Estoppel**

Collateral Estoppel, also know as issue preclusion, is a common law doctrine that prevents a party to a lawsuit from re-litigating an issue once it has been decided in a previous case.

It requires 1) prior litigation in which the identical issue was brought before the court, 2) that the issue was actually litigated in the first case, and the opposing party had full and fair opportunity to litigate the issue, and 3) that the issue was decided, and rendered a necessary part of the final judgment.

### **Identical issue**

Worker is filing a cross claim against Contractor for negligence causing personal injury. Contractor's negligence was what was at issue in case one, so the issues are the same.

**Issue actually litigated, and the opposing party had full and fair opportunity to litigate the issue.**

In case one, the matter went to trial, meaning that Contractor had a full and fair opportunity and strong incentive to fully litigate his case.

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**Issue was decided and rendered a necessary part of the final judgment.**

In case one, final judgment on the merits (whether or not Contractor was negligent) was entered.

**Mutuality Considerations**

Traditionally, mutuality was required, meaning issue preclusion could only apply to parties in the first case. Modernly, the Defendant must have been a party in case one so his or her due process rights are not violated. They are entitled to their day in court to litigate the issue. However, modernly, non parties may be involved under certain circumstances.

**Non Mutual Defensive Issue Preclusion**

In non mutual defensive issue preclusion, the non party to the first case is able to shield (defend) himself by using the judgment on an issue in a previous case in a current litigation.

This does not apply to Worker, because he is not seeking to defend himself, but rather, to assert a claim against Contractor.

**Non Mutual Offensive Issue Preclusion**

Non mutual offensive issue preclusion describes the event where a plaintiff who was not a party to the prior litigation seeks to use a finding from the prior litigation against the present defendant.

**Fairness Considerations**

Here, Worker is seeking to use the issue of negligence against Contractor. Traditionally, non mutual offensive preclusion has not been allowed, but modernly courts have allowed

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it if doing so is not unfair. The factors the courts look at to analyze fairness include whether the party had an opportunity and incentive to litigate, whether there was any inconsistent finding or appeal on the first case, and whether or not future claims were foreseeable.

### **Opportunity and incentive to litigate**

In case one, Contractor had a full and fair opportunity as well as incentive to litigate his case against negligence.

### **Whether there was inconsistent finding**

The facts do not suggest there was any dispute or appeal of the ruling in case one.

### **Whether future claims were foreseeable**

Because Worker was also present in the incident that harmed Homeowner, it was foreseeable that he may wish to assert a negligent claim as well.

### **Conclusion**

Using the fairness factors to analyze non mutual offensive issue preclusion in Worker's claim against Contractor for negligence, the court would likely find that it was fair for Worker to file a cross claim against Contractor. However, in case one Contractor was not found liable for negligence so Worker will not benefit from doing so.

Contractor will be able to use the ruling in case one of his being not guilty on the issue of negligence as a shield against Worker's cross claim of negligence.



2)

## Question 2

### **1. Did the Court Err in Ordering Pam to Submit to Medical and Psychological Examinations?**

The issue here is whether, in the course of discovery, it is permissible to order a party to submit to a medical or psychological exam.

#### **Discovery**

Discovery is the exchange of legal information and known facts of a case for the purpose of ensuring that all parties are informed about the facts of the case.

Under Federal Rule 26(b)(1), parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense. For good cause, the court may order discovery of any matter relevant to the subject matter involved in the action.

#### **Medical and Psychological Examinations**

Under Federal Rule 35, the district court may order (1), "a party, or a person in their custody or under their legal control, (2) whose mental or physical condition is in controversy, (3) to submit to a physical or mental examination (4) on a motion for good cause.

Medical and Psychological exams are the only discovery process that requires a motion. All other discovery processes can be by giving notice.

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**Good Cause** - To find good cause, the court must find that the moving party cannot obtain the necessary information from other sources, including previous examinations of the same condition.

**In Controversy** - Where the moving party places another party's condition in issue, the moving party must make an evidentiary showing the the responding party may well have a specific condition appropriate to the examinations requested. The movant can't use Rule 35 as a way of hoping to discover a relevant condition.

A court can only order a medical and psychological exam of Pam if her physical or mental status are at issue.

Here, Pam is not suing for personal injury, or emotional/mental distress. She is suing Dave for negligence.

### **Conclusion**

Because Pam is not claiming any personal injury or emotional/mental distress, her physical and mental condition are not in controversy. Based of Federal Rule 35, the court erred in granting Dave's motion to order Pam to submit for physical and mental examinations.

## **2. Did the Court Err in Overruling the Objection Regarding Mike's Deposition?**

The issue here is whether or not it is lawful for a Mike to be deposed when he is not a party to the litigation.

### **Depositions**

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A deposition is a process utilized in discovery whereby a witness is examined under oath and recorded by sound, video, or stenography. Non parties can be brought in for deposition to a case; in fact depositions are the only discovery tool available to a party in a case that can apply to non parties.

Depositions can be used to impeach the deponent, or for any purpose if the deponent is an adverse party or is unavailable for trial.

To depose someone who is not a party to the case, they must be issued a subpoena. Subpoenas are not necessary to depose a party to the litigation. Any person being deposed can only be deposed once, and the deposition cannot exceed one 7 hour day unless the court orders otherwise. The deponent also cannot be asked to travel more than 100 miles from their residence or employment.

### **Conclusion**

Even though Mike is not a party to the case, the court did not err in overruling Dave's objection because it is lawful to depose non parties for discovery in a case.

### **3. Did the Court Err in Granting Pam's Motion for a Jury Trial?**

The issue here is whether or not Pam properly asserted her right to a jury trial.

### **7th Amendment Right to Jury Trial**

The 7th amendment reads: "In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury shall be otherwise reexamined in any Court of the United States, than according to the rules of the common law."

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The 7th amendment preserves, but does not grant, the right to litigation.

Additionally, the right to a jury trial only applies to cases where damages are being sought. There is no right to a jury trial for equitable cases seeking injunctions, as only judges can decide these cases. Both Plaintiffs and Defendants have a right to request a jury.

### **Assertion of the Right to a Jury Trial**

Under Federal Rule 38, a party who wants a jury trial of an issue must affirmatively assert his jury trial right by serving upon the other parties a demand for jury trial in writing at any time after the commencement of the action, but not later than 14 days after the service of the last pleading directed to such issue. Failure to do so will result in a waiver of the jury trial right.

Here, Pam served the lawsuit against Dave in April. The facts tell us that she did not file a demand for a jury trial until October, two weeks before trial. The facts also do not indicate that she served notice in writing to Dave.

### **Conclusion**

Because Pam did not assert her right to a jury trial within the required 14 days from the date of the last pleading directed to the issue, and because she did not serve written notice of her demand for a jury trial to Dave, Pam did not properly assert her right to a jury trial, and the right is waived.

Under FR 38, the court erred in granting Pam's motion for a jury trial.

## **4. Did the Court Err in Denying Dave's Motions for Judgment as a Matter of Law?**

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The issue here is whether Dave's motion for Judgment as a Matter of Law was valid.

### **Motion for a Judgment as a Matter of Law (JMOL)**

This motion is made before a case is submitted to the jury, and argues that no reasonable jury could find for the opposing party. The standard is a *reasonable* jury.

If there is no evidence to support a reasonable finding for the opposing party, judgment is entered by the court in favor of the movant.

Either party may move for JMOL. To do so the motion must: (1) be made at the close of the other party's case (2) the moving party must specify the judgment sought, and (3) the moving party must specify the law and facts on which the party is entitled to judgment. In considering a JMOL motion, the court must view the evidence in the light most favorable to the non-moving party.

The motion for JMOL is proposed outside the presence of the jury.

### **Motion not made at the proper time.**

Here, Dave waited until after the jury reached and delivered a verdict before moving for a JMOL. The facts also do not indicate that Dave specified the judgment sought, or the law and facts on which he was entitled to judgment.

### **Conclusion**

Because Dave did not proper move for JMOL, the court did not err id denying his motion.

### **Renewed Motion for Judgment as a Matter of Law (RJMOL)**

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Had Dave properly moved for JMOL, he would be entitled to move for RJMOL. RJMOL is a subsequent attempt at a judgment as a matter of law motion. RJMOL is a motion to have a verdict altered after a jury has returned the verdict. It can only be raised if JMOL was raised before the jury began deliberations.

If both JMOL and RJOM are denied, a party can move for a new trial.

3)

Question 3

**1. Was it Proper for the Federal District Court to Certify the Class?**

The issue here is whether Paris filed a valid class action suit against PharmaTech.

**Class Actions**

A class action is a suit brought by or against large numbers of individuals whose interests are sufficiently related, and the purpose is to adjudicate their rights or liabilities in a single action when it is more practical than filing a series of separate individual suits.

The initial pre-requisites for a class action suits are Numerosity, Commonality, Typicality, and Adequacy.

**Numerosity**

Numerosity is met when the class is so numerous that joinder of all members is impracticable.. The impracticality may be based on geographic dispersion of absentees and the size of individual claims.

Here, Paris is seeking to file a class action that includes all persons who too CC as therapeutic or preventative, and the estate of all persons who died from the virus while on CC. The facts tell us that 'thousands' of people had already taken CC before Paris decided to file the class action. It is very likely that many more had taken CC since then, and that the potential number of people eligible to join her class action would be very large. Joining all members would likely be impracticable due to the large number and geographical dispersion of the members due to the widespread nature of the Coronavirus.

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### **Commonality**

Commonality refers to the questions of law and fact that predominate. It requires that there is some issue or some injury in common with all class members, so resolution of that issue will benefit all members at once.

Here, Paris has opened the class action to all persons who have taken CC as therapeutic and preventative, regardless of whether they have suffered any adverse condition as a result of doing so. The only issue in common for all proposed members is that they took CC. For an a a cause of negligence to be actionable, there must be damages.

### **Typicality**

Typicality requires that the claims or defenses of the representative parties are typical of the claims or defenses of the class. The purpose is to ensure that all class members will be fairly and adequately protected in their absence.

Here, Paris became sick after taking CC. In her class action she is seeking to represent large numbers of people who may have taken CC, but not gotten sick. Because of this, she is not a typical representation of her class.

### **Adequacy**

Adequacy requires that the representative parties will fairly and adequately protect the interests of the class.

Here, because Paris is not a typical representation of those who are members of the class, she will likely not be able to fairly and adequately protect their interests. They may be more in need of knowing their rights should they become sick, or measures enacted to be

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in place in an easily accessible manner should they become sick. Paris will likely want to litigate from her viewpoint of having been injured.

### **Conclusion**

Because Paris' proposed class action does not meet the elements for a class action, and because for a damages class it is required that members claim to have been injured in the same way by the defendant, it was not proper for the federal district court to certify the class.

### **Federal Class Certification**

Had it been a valid class action, under the Class Action Fairness Act, federal jurisdictions would require that the subject matter jurisdiction is met, that the amount in controversy exceeded 5 million, and that there were at least 100 members.

### **Types of Classes**

There are three types of class actions: Prejudice (treatment is necessary to avoid harm to either class members or to the non class party), Injunctive/Equitable (they seek injunctive or declaratory relief rather than monetary damages) and Damages.

Had Paris been successful in her class action, it likely would have been for a damages class. A **damages** class allows certification of a class when class members claim to have been injured in the same way by the defendant, and seek monetary relief. A damages class requires a showing of **predominance** (common questions predominate over individual questions) and **superiority** (the class action is superior to other available methods.)

2. Was it proper for the court of appeals to refuse to review the class certification?

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The issue here is whether the appeal of the certification for the class action was valid.

The purpose of PharmaTech requesting an appeal to the federal class action certification is likely on the grounds that the elements of commonality and typicality were not met as many of the class members suffer no injuries.

### **Final Judgment Rule**

The Final Judgment Rule is the legal principle that appellate courts will only hear appeals from the 'final' judgment in a case. The policy behind the Final Judgment Rule is to promote judicial efficiency.

### **Exceptions to the Final Judgment Rule**

There are some exceptions to the final rule. They include class action certifications, injunctions, reversible error, and serious abuse of power by a judge.

Because the suit Pharma Tech is seeking an appeal on is a class action, it would be eligible for appeal.

### **Scope of Appellate Review**

The areas of review a court will consider are errors of law occurring in the lower court, abuse of discretion by the trial court, finding of fact by jury, and finding of facts by a judge.

Here, the scope Pharma Tech will want to request appeal on is error of law occurring in the lower court, because the district court certified the class action when the elements of law for a class action were not met.

### **Harmless and Reversible Error**

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Harmless error is error that does not substantially effect the material issue of the case. Reversible error is error that materially effects a primary issue of the case. Here, Pharma Tech will want to show that the federal court committed reversible error by certifying Paris' class action when the elements for a class action were not met.

### **Conclusion**

Because class actions are exempt from the final judgment rule, and because there was good cause to show that the district court erred in the application of law, the court of appeals erred in refusing to review the class certification.

**END OF EXAM**

Suggested Answer to question one

Did the court err in denying the Homeowner's motion to dismiss because Contractor was an indispensable party?

Was Contractor Necessary?

Necessary (aka "Required") party: a party who should be joined, if feasible):  
F.R.C.P. 19 (a) provides that a person who is subject to service of process (i.e., personal jurisdiction) and whose joinder will not deprive the court of jurisdiction over the subject matter (i.e., destroy complete diversity) should be joined as a party in the action if:

- 1) In his absence complete relief cannot be accorded among those already parties;
  - 2) The disposition of the action in the absent of the intervenor will be likely to impair his ability to protect that interest. (Absentee's interest may be harmed if not joined i.e. practical harm);
- OR
- 3) Absentee claims an interest that subjects a party (usually D) to a risk of multiple obligations.

Was Contractor Indispensable party?

Indispensable party (a necessary party whom it is not feasible to join and in whose absence the lawsuit - "in equity and good conscience" – should be dismissed)

-Can the court feasibly join the Absentee?

It is feasible to join absentee (A) if:

- (1) there is PJ over Absentee and
- (2) joining Absentee will not destroy diversity jurisdiction (the court determines whether A would come in as a P or a D to see if bringing Absentee in will destroy up diversity).

If Absentee's joinder is feasible, the court will order Absentee's joinder.

If joining Absentee is not feasible, the court must decide to either, in equity and good conscience, proceed without Absentee or dismissed.

The court will look at these factors in making its decision:

- 1) Is there an alternative forum available? (maybe some state court);
- 2) What is the actual likelihood of harm to Absentee?
- 3) Can the court shape relief to avoid that harm to Absentee?

If the court decides to dismiss the case rather than to proceed, Absentee is called indispensable party.

Homeowner moved to dismiss the suit on the ground that Contractor was an indispensable party, and the court denied the motion. Contractor's fault is not relevant as to the Homeowner's liability to Worker as the court expressly found that Trucker was not negligent, so he is not necessary party to the case.

Contractor is not necessary to the Worker v. Homeowner suit. Contractor cannot be indispensable party.

2- How should the court rule on Homeowner contention that Contractor's claim against Homeowner was barred by claim preclusion?

### Claim preclusion.

The issue is whether a judgment already entered in case 1 precludes litigation of any matters in case 2.

Basic Idea: P is allowed to sue once to vindicate ALL rights to relief for that claim.

1-same cause of action

2- prior judgment

a. Valid on the merits

b. Final

c. On the merits

3- persons bound by the prior judgment.

Here, claim preclusion is inapplicable because the parties are different. In case one, Homeowner sued Contractor while in case 2, Contractor sued Homeowner based on the same cause of action. Nevertheless, Contractor is barred from bringing the suit because of the compulsory counterclaim.

### compulsory counterclaim

If the counterclaim arises out of the same transaction or occurrence as the plaintiff's claim, it must be asserted, or the claim will be waived.

Contractor's claims arise from the same transaction or occurrence as in the case of Homeowner v. Contractor. As a result, Contractor must assert all his claims against homeowner. Otherwise, these claims will be deemed as waived.

Contractor waived his right to assert any claim arising from the same transaction or occurrence as in Homeowner v. Contractor.

3- How should the court rule on Contractor assertion that Homeowner's claim against Contractor was barred by claim preclusion?

### Claim preclusion

See rule above.

Homeowner sued Contractor in federal court claiming \$100,000 in property damages. At trial, the judge found that Contractor was not negligent and final judgment on the merits was entered. In subsequent suit, Homeowner counterclaimed against the Contractor for \$150,000 in personal injury. Claim preclusion will apply under the same transaction test as property and personal injury claims arising out of the same accident are the same claim.

Under the primary right doctrine, each is a distinct claim.

Since the case is filed in state X which follows the FRCP, the Homeowner is precluded under the same transaction test.

4- How should the court rule on Contractor claim that the collateral estoppel doctrine bars worker's cross-complaint?

Issue preclusion:

1. Identical issue
2. Actually litigated and determined
3. Necessarily determined.
4. Full/fair opportunity to litigate issue.
5. Persons bound/ privity.
6. Persons who can invoke

No issue preclusion effect as the issues in the two suits are not identical. In Homeowner v. Contractor, Contractor was found not negligent as to Homeowner.

In Worker's cross-complaint, Contractor's negligence is at issue as to the Worker.

Contractor cannot use issue preclusion against Worker because Worker never had full and fair opportunity to litigate Contractor's negligence in Homeowner v. Contractor suit.

### **Suggest answer for question two.**

1- Did the court err in ordering Pam to submit to medical and psychological examinations? Discuss

#### Scope of discovery

FRCP provides for broad discovery for information relevant to the cause of action, including any materials reasonably calculated to lead to the discovery of admissible evidence.

FRCP provides the procedural rules applicable here. The case involves a plane crash accident and Pam is suing Dave for negligence. A negligence case requires establishing duty, breach, causation, and damages, so any information relating to the accident, and Pam's resulting physical condition are relevant.

#### Physical Exam

Request for physical examination of a party may be sought by opposing party. Requires court order upon showing: 1- Physical condition is at issue; 2- Good cause for examination

Pam's physical condition is at issue since this is a negligence suit, and the extent of her injury and if any injuries he has were caused by the accident are relevant to the element of damages.

Good cause is found where the exam is relevant and not overly intrusive. Here, the extent of Pam's injury is at issue and reasonable minds could differ on that point, so there is good cause to order an examination.

The court did not err in granting the physical exam request.

#### Mental exam

Request for mental examination of a party may be sought by opposing party. Requires court order upon showing: 1- Physical condition is at issue; 2- Good cause for examination.

While Pam's physical condition is at issue, from the car accident, his mental condition is not in controversy. Pam's mental condition is not at issue, and thus there is no good cause for ordering a mental examination since the basis of the suit is a plane crash the mental examination of Pam is not likely to lead to the discovery of admissible evidence.

The court did not err in granting the physical exam request.

2- Did the court err in overruling the objection regarding Mike's deposition? Discuss

Non-parties can be deposed through means of a subpoena. The FRCP permits one deposition per person, not to exceed 7 hours in a day.

Mike is a co-pilot and is not a party to the litigation. So long as Mike's testimony is relevant and not privileged, he may be deposed.

Mike can be deposed, but as a non-party, he must receive notice through means of a subpoena. There is no indication that Mike was served with the subpoena here, since Pam served Dave with a notice to depose Mike. Though Dave's objection did not specify this reason, since Mike was not properly put on notice with a subpoena, the court erred in permitting Pam to depose Mike.

The court did not err in permitting Pam to depose Mike because he was not properly noticed.

3- Did the court err in granting Pam's motion for a jury trial? Discuss

7<sup>th</sup> Amendment right to jury trial

In federal court, there is a right to a jury trial in all civil actions at law. Plaintiff must demand in writing, no later than 14 days after service of the last pleading that he wants a jury trial, or it is waived.

Here, Pam seeks legal damages for negligence and thus has a right to request a jury trial. Dave filed her answer to Pam's complaint back in April. However, Pam made the demand for jury trial in October, only two weeks before trial. Since Pam did not make this demand timely, it is waived, and the court erred in denying Dave's motion to strike the demand of a jury trial

The court erred in granting Pam's request for a jury trial.

4- Did the court err denying Pam and Dave's motions for judgment as a matter of law? Discuss

Judgment as a Matter of Law

A judge may grant a motion for judgment as a matter of law when the evidence, viewed in the light most favorable to the party against whom the verdict would be directed (including all legitimate inferences in their favor and without considering the credibility of the witnesses), is such that a reasonable juror could come to only one conclusion. If a party moves for a judgment as a matter of law, she may renew that motion within 28 days of the judgment being rendered. In other words, a motion for judgment as a matter of law is a prerequisite for a renewed motion for judgment as a matter of law.

The facts state that Dave did not move for a judgment as a matter of law until after the jury returned the verdict. This is more appropriately called a renewed motion for judgment as a matter of law. In order to move for a renewed judgment as a matter of law, Dave first had to move for a judgment as a matter of law sometime during the trial. Having failed to do so, it thus should be prohibited from bringing a renewed motion for judgment as a matter of law.

Thus, the court was correct in denying Dave's motion.

## **Suggest answer for question three.**

1- Was it proper for the federal district court to certify the class? Discuss

### Class certification

I. Prerequisites- FRCP 23(a)

A. Requirement of a class

1. Requirements

- a. Precise-yes
- b. Objective-yes
- c. Presently ascertainable-yes

2. Not if:

- a. Dependent on subjective criteria-no
- b. Extensive factual inquiry required-no
- c. Too broad or vague-fairly specific

B. Class representative must be member of class-yes

C. Joinder is impracticable-numerosity-yes; more than 40 but not too large

D. Questions of law or fact common to class- Wal-Mart- Common question of law or fact must drive resolution of case. Re causation court may need to probe merits of the case

E. Representative claims or defenses of typical of class-Typicality- May be a problem; different losses

F. Representative fairly and adequately protects the interests of the class-May be a problem; different losses

II. Types of Class Actions- FRCP 23(b)- Class 3 type of Class Action; Requirements:

A. Questions of law or fact common to the case must predominate over questions affecting only individuals, and

B. Class action is superior to other available methods for fairly and efficiently adjudicating the controversy.

Consider:

1. Class members interest in individually controlling prosecution or defense;

2. Extent and nature of any litigation concerning the controversy already begun by or against class members;

3. Desirability ( or undesirability) of concentrating litigation in the particular forum; and

4. Likely difficulties in managing a class action.

2- Was it proper for the court of appeals to refuse to review the class certification? Discuss.

Final judgement rule: a final judgment is one that finally disposes of the case; where nothing remains to be done in the suit but to execute the judgment. General rule is the interlocutory (non-final) order are not immediately appealable in order to not burden the court of appeals with piecemeal appeals

### Exception of the final judgment rule

A district court's order granting or denying certification of a class action can be appealed within 14 days of entry of the order. [Fed. R. Civ. P. 23(f)] The court of appeals has complete discretion in deciding whether to hear the appeal.

The court did not err in refusing to hear the case since it is within the appellate court discretion.