

MONTEREY COLLEGE OF LAW
Civil Procedure Final Examination
Spring 2020
Prof. J. Martin

INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given four (4) hours to complete the examination.

QUESTION ONE

Oscar was the driver and Robert a passenger in Oscars' car when it collided with a truck driven by Todd. Both vehicles were damaged. Robert, Todd, and Oscar were injured.

Oscar sued Todd in a federal district court claiming \$76,000 in property damage to his auto. In his answer, Todd denied negligence and asserted contributory negligence. After a nonjury trial, the court expressly found that Todd was not negligent. Judgment was entered for Todd and has become final.

Subsequently, Robert sued Oscar for \$400,000 personal injury in a federal district court. Prior to trial, Oscar timely moved that the suit be dismissed on the ground that Todd was an indispensable party and had not been named a defendant. After a hearing, the court denied Oscar's motion and he immediately appealed.

Before trial, Todd timely petitioned to intervene as a plaintiff and, over Oscar's objection, the court granted the petition. Todd's complaint in intervention sought \$200,000 for personal injury and property damage against Oscar, who counterclaimed for \$150,000 in personal injury damages. Robert, over Todd's objection, was permitted to assert a \$400,000 cross-complaint against Todd.

None of the claims asserted is barred by a statute of limitations.

1. In the State X court action did the court correctly rule that:
 - a. Todd was not an indispensable party?
 - b. Todd could intervene?
 - C. Robert could cross-complaint against Todd?
2. Should the federal court of appeals entertain Oscars' appeal?

Discuss.

QUESTION TWO

In March, while driving her car, Diana struck and injured Phil.

In April, Phil filed a complaint against Diana in federal district court properly alleging diversity jurisdiction and seeking damages for negligence for physical injury.

In May, Diana filed an answer denying negligence.

In June, during discovery, Diana filed a motion asking the court to order (1) a physical examination and (2) a mental examination of Phil. Over Phil's objection, the court ordered him to submit to both examinations.

In July, Diana served Phil with a notice to depose Laura, a physician who treated him after the accident. Phil objected on the grounds that (1) Laura could not be deposed because she was not a party, and that (2) deposing her would violate the physician-patient privilege. The court overruled Phil's objections.

In September, a few weeks before trial, Phil decided to file a demand for a jury trial. Diana immediately filed a motion to strike the demand. The court granted Diana's motion.

1. Did the court err in granting Diana's motion to order (a) the physical examination and (b) the mental examination of Phil? Discuss.
2. Did the court err in permitting Diana to depose Laura? Discuss.
3. Did the court err in granting Diana's motion to strike Phil's demand for a jury trial? Discuss.

QUESTION THREE

In 2018, John was injured by a defective machine. As a result, John went to Doctor Dave to treat his injuries. Dave prescribed Pill to John. Pill is a medication manufactured by Pill Pharmaceutical.

John's condition worsened gradually after that, but it was not clear whether his decline was due to the medicine or his injuries. Because of the complications, John missed six months of work.

Subsequently, John sued Dave in a state court in State A to recover for his personal injuries caused by Dave's treatment. Dave answered by a motion for Judgment as a Matter of Law, which the court denied.

At trial, the judge ruled that Dave was negligent, and judgment was entered for John. Dave appealed.

While the appeal was still pending, in January 2020, John sued Dave in federal court in State B to recover the six months lost wages. Dave immediately filed a motion for Summary Judgment, and the court granted the motion.

In February 2020, Max sued Pill Pharmaceutical, alleging that Pill was defectively designed, and obtained a final judgment after trial on that issue.

In March 2020, relying solely on the judgment in Max v. Pill Pharmaceutical, John sued Pill Pharmaceutical in state court in State C, alleging that Pill was defectively designed.

Discuss:

1. Did the court err in denying Dave's motion for Judgment as a Matter of Law?
2. Did the court err in granting Dave's motion for Summary Judgment in the January 2020 suit?
3. What effect, if any, does Max v. Pill Pharmaceutical have on John's action in State C against Pill Pharmaceutical?

Note: A statute of limitations bars none of these suits. Do not discuss personal jurisdiction or subject matter jurisdiction.

Civ Pro-Spr20-MCL

Question 1 answer

Issue	Rule	Analysis	Conclusion
<p>A. <u>Todd was not an indispensable party</u></p>			
<p><u>Necessary party</u></p>	<p>Joinder is proper (the party is “necessary” and the federal court should join the party) if: (1) in the person’s absence complete relief cannot be accorded; or (2) the person claims an interest relating to the subject matter/disposition without the party may (i) impair or impeded the person's ability to protect the interest or (ii) leave any remaining party subject to a substantial risk of incurring double. multiple, or otherwise inconsistent obligations.</p>	<p>Oscar, a citizen of State X, sued Todd in federal district court in State X, claiming \$76,000 in property damages to his auto. In his answer Todd denied negligence and asserted contributory negligence. After a nonjury trial, the court expressly found that Todd was not negligent. Judgment was entered for Todd and has become final.</p> <p>Subsequently, Robert commenced a \$400,000 personal injury suit against Oscar in an appropriate State X court. State X has adopted the Federal Rules of Civil Procedure. Prior to trial, Oscar timely moved that the suit be dismissed on the ground that Todd was an indispensable party and had not been named a defendant. After a hearing, the court denied Oscar's motion. Todd’s fault is not relevant as to Oscar's liability to Robert as the court expressly found that Todd was not negligent, so he is not a necessary party to the case.</p>	<p>Proper ruling</p>
<p>Indispensable party</p>	<p>When a party cannot be joined, the court must determine whether in equity and good conscience the action should proceed, or be dismissed because the absent person is indispensable. The court considers these factors: (a) the extent to which a judgment rendered without the party might prejudice the person or other</p>	<p>T is not necessary to the R v. O suit. Therefore, T can't be an indispensable party.</p>	<p>Proper ruling</p>

	<p>parties; (b) whether the prejudice can be avoided by appropriately shaping the relief; (c) whether adequate relief can be granted without the person; (d) whether plaintiff has an adequate remedy if the action is dismissed.</p>		
<p>B. <u>Todd Could Intervene?</u></p>	<p>Permissive Intervention</p> <p>(1) On timely motion, the court may permit anyone to intervene who:</p> <p>(A) is given a conditional right to intervene by a federal statute; or</p> <p>(B) has a claim or defense that shares with the main action a common question of law or fact</p>	<p>Before trial, Todd timely petitioned to intervene as a plaintiff and, over Oscar's objection, the court granted the petition. Todd's complaint in intervention sought \$200,000 for personal injury and property damage against Oscar. T does have a real interest in the R vs. O case and there are common questions of law and fact that involve T, namely O's possible negligence, so T should be allowed to intervene under Permissive intervention.</p>	<p>Proper ruling</p>
<p>C. Robert Could Cross-Complaint Against T?</p>	<p>A pleading may state as a crossclaim any claim by one party against a co-party in the claim arises out of the transaction or occurrence that is the subject matter of the original action.</p>	<p>Robert, over Todd's objection, was permitted to assert a \$400,000 cross-complaint against Todd. R's cross-complaint arises out of the auto accident between O and T. R as a passenger is attempting to prove T's negligence.</p>	<p>Proper ruling</p>
<p><u>2. Should the federal court of appeals entertain Oscars' appeal?</u></p>			
<p>1-Final judgement rule</p>	<p>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.</p> <p>No exception to the final judgment exists. However, Oscar may seek Writ of Mandamus.</p>	<p>Oscar timely moved the court to dismissed Roberts v. Oscar case on the ground that Todd was an indispensable party and had not been named a defendant.</p> <p>The appellate court cannot hear cases which are not final or interlocutory. Here, the judgment did not decide the case on its merits, but merely denied Oscar's motion</p> <p>Thus, the appellate court should not entertain Oscars' appeal.</p>	<p>No.</p>

2. Writ Of Mandamus	A writ of mandamus may be sought in the court of appeal if the lower court abused its discretion. The abuse must have been erroneous.	Here, the district court was correct in denying Oscar's motion. Thus, the court of appeal will not grant a writ of mandamus.	

Question 2 answer

1. Did The Court Err In Granting Diana's Motion To Order (a) The Physical Examination and (b) The Mental Examination of Phil?

Scope of Discovery

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. Rule 26 (b)(1) further provides that "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. ***(Rule prior to December 2015 FRCP Amendment)**

In March, while driving her car, Diana struck and injured Phil in an auto accident. Phil's complaint against Diana sought damages for negligence for physical injury. As such, Diana motion asking the court to order a physical and mental examination is intended to obtain nonprivileged matter relevant to Phil's claim regarding the extent of his alleged damages arising out of the automobile accident.

Therefore, Diana's discovery motion requesting the court to order a physical and mental examination is within the proper scope of discovery.

(a) The Physical Examination

Under Rule 35, the district court may order (1) "a party, or a person its custody or under its 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." Here, Phil, as the plaintiff, is a party. In *Schlagenhaufv. Holder*, the U.S. Supreme Court stated that "[a] plaintiff in a negligence action who asserts mental or physical injury, places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such

asserted injury.

Phil's complaint sought damages for physical injury caused by Diana's alleged negligent driving. His physical injury is therefore *in controversy* and *good cause* has been shown for the physical examination.

The court did not err in granting Diana's motion to order the physical examination.

(b) The Mental Examination of Phil

Here, Phil did not assert mental injury. Therefore, Diana must support her motion to order a mental examination of Phil by making *an affirmative showing* that Phil's mental condition is in controversy and that there is good cause for ordering a mental examination of Phil. Here, Diana has not made such a showing.

Therefore, the court erred in ordering Phil to submit to a mental examination.

2. Did The Court Err In Permitting Diana To Depose Laura?

Scope of Discovery

Defined above.

Here, Laura has information relevant to Phil's claim of physical injury alleged in his complaint because she treated Phil immediately after the accident. As a treating doctor, Laura is considered an ordinary fact witness who did not acquire her facts and opinions in anticipation of litigation. Therefore, the facts and opinions while treating Phil are not protected under Rule 26(b)(4).

First objection that (1) Laura could not be deposed because she was not a party:

An oral deposition is the testimony of a witness out-of-court before an official who is empowered to administer an oath, by a party who has given notice to all other parties so that they can be present to cross-examine the deponent. As a general rule, any party may take the deposition of any witness, either party or nonparty, after the commencement of the action. In addition to the service of a notice of deposition on all parties, the nonparty witness should be subpoenaed.

In July, Diana served Phil with a notice to depose Laura, a physician who treated him after the accident. Diana as a party to Phil's suit may depose Laura even though Laura is a not a party.

In addition to the notice of deposition, Diana should serve a subpoena on Laura requiring her to attend the deposition.

Thus, the court correctly rejected Phil's objection that Laura could not be deposed because she was not a party.

Second objection that (2) deposing Laura would violate the physician-patient privilege:

Physician/Patient Privilege

A patient, whether or not a party to an action, has a privilege to refuse to disclose, and to prevent another from disclosing, information, including information obtained by an examination of the patient, transmitted between a patient and his physician for the purpose of medical diagnosis or treatment.

Here, Phil as the holder of the physician/patient privilege is asserting it to prevent Laura from being deposed by Diana.

Exception – Patient-Litigant Exception

There is no physician-patient privilege as to communications relevant to an issue of the physical condition of the patient in any proceeding in which he relies upon the condition as an element of his claim or defense.

Here, Phil is seeking damages for physical injury arising out of the accident. Damages are a required element for his negligence claim.

Therefore, the court correctly rejected Phil's objection that deposing Laura would violate the physician-patient privilege.

3. Did The Court Err In Granting Diana's Motion To Strike Phil's Demand For A Jury Trial?

The Seventh Amendment states: "In suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved." In determining whether a claim is "legal" or "equitable," the court engages in a two-step analysis, first analogizing to a right that existed in 1791 and, second, determining whether the remedy is legal or equitable. The remedy of damages is a legal remedy that was available in a common law court.

Here, Phil's negligence claim was for compensatory damages. Thus, it is a legal right available in a court of common law in 1791. Thus, Diana has a constitutional right to a jury trial.

Assertion of Right

In federal court, 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 therefore in writing at any time after the commencement of the action and 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. F.R.C.P. 38.

The facts state that in April, Phil filed a complaint against Diana in federal district court. Phil's demand for a jury trial was not filed until September "a few weeks before trial." As such, it was not filed until four months after the last pleading directed to such issue well past the 14-day deadline for serving the written demand. Therefore, Phil's failure to timely file will result in a waiver of the right to jury trial.

Thus, the court did not err in granting Diana's motion to strike Phil's demand for a jury trial.

Q3-civ pro-spr2020- Suggested Answer:

1- Did the court err in denying Doctor Dave's motion for judgment as a matter of law?

The trial judge can grant this motion after the opposing party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party with respect to that issue i.e. a reasonable jury would not have a legally sufficient evidentiary basis.

Here, when Dave moved for JMOL, John had not yet presented its evidence. Assuming that each party had discovery, Dave should have moved for summary judgment and not JMOL.

The court did not err in denying the motion.

2- Did the court err in granting Dave's motion for summary judgement in the Jan 2020 suit?

Summary judgment

This motion should be granted if there is no genuine dispute as to any material facts. All issues of credibility and all reasonable inferences are to be resolved in favor of the non-moving party. A party is allowed to move for summary judgment after discovery since the purpose of the motion is to determine if trial is necessary.

Assuming that each party had discovery, the trial court did not err in granting the summary judgment because there is no dispute of material facts since John is barred by claim preclusion from asserting a second suit that arises from the same transaction or occurrence against Dave

No error.

Claim preclusion

Plaintiff has one chance to vindicate all rights in a claim. Since the initial proceeding was in a State A court, the Full Faith and Credit Clause will require the federal court in state B to apply the principles of preclusion that would be applied by a State A court.

Under res judicata principles, where there has been a final, valid judgment on the merits between the parties (or their privies) with respect to a claim that is being asserted in a subsequent lawsuit, the latter action is barred under the doctrine of claim preclusion.

The elements of claim preclusion are met:

First, this suit involves the same claimant against the same defendant. Second, suit 1 ended in a valid final judgment on the merits. Appealed does not change the final judgement rule.

Third, under the majority rule, case 2 arose from the same transaction or occurrence. Therefore, case 1 and case 2 assert the same claim. Thus, John is precluded from asserting case 2.

However, under the minority rule, case 1 has a different right violated (personal injury) than case 2 (lost wages). Therefore, John is not precluded from asserting case 2.

3- What effect, if any, does John's suit against Hospital in State A on Paula's action in State C against Doctor Dave?

Collateral Estoppel - Issue Preclusion -: Where the second lawsuit involves a different claim, the first judgment may be invoked as to all issues which were actually litigated and determined in the first action and necessarily determined (i.e. essential to the determination of the first action).

Prerequisites to the application of collateral estoppel:

- 1- Identical issue: Collateral Estoppel applies only when the identical factual issue is involved in both actions. Similarity of issues is not enough
- 2- Actually litigated and determined: The issue preclusion effect of a prior judgment in a later action applies to those issues actually litigated and determined in the former action, but not to those issues which merely could have been (but were not) litigated therein. The trier of fact in the former action must have actually made a determination (i.e., a finding) with respect to the fact in order for collateral estoppel to preclude relitigation of that fact in the subsequent action.
- 3- "Necessarily determined" - Essential facts: Collateral estoppel applies only as to those fact issues decided in the former action that were essential to the judgment
- 4- Full and fair opportunity to litigate. If the party against whom collateral estoppel is invoked can show that he did not have a full and fair opportunity to litigate the issue in the former action, he will not be precluded from relitigating that issue in the subsequent suit

Persons Who Can Invoke Collateral Estoppel:

Mutuality rule: Since a judgment cannot be used against a person who was not a party or in privity with a party, that person has traditionally been barred from taking advantage of the judgment

Offensive Use: Prior judgment used as a sword

Usually not allowed. However, there is a trend to allow this. Here are the factors to analyze.

- a. Full and fair opportunity to litigated in case 1
- b. Incentive to litigated strongly
- c. No inconsistent finding on this issue.
- d. Could John easily join Max v. Pill pharma or adopted wait and see strategy to protect himself from adverse judgment
- e. Was it foreseeable for the party in Max v. Pill Pharma that someone in a subsequent suit would use issue preclusion offensively against the party?

THIS PAPER IS WONDERFULLY ORGANIZED - I FOLLOWED YOUR IRAC STRUCTURE & BELIEVE YOU HAVE AN EXCELLENT GRASP OF THE LAW AND A TOPNOC WRITING STYLE. EXCELLENT WORK 😊 85%

1)

1a.

Compulsory Party Joinder - Is Todd an Indispensable party?

Compulsory party joinder requires persons necessary to a claim to be joined so long as it is feasible.

HAVE A GREAT YEAR COMING UP!

ISSUE

Is the absentee necessary?

An absentee ("A") is necessary if without A, the court cannot accord complete relief, or A's interest may be harmed if not joined.

Here, Robert was a passenger in Oscar's vehicle when it collided with Todd's truck. Oscar and Todd subsequently were in litigation and the court found that Todd was not negligent and judgement was entered for Todd. In this present case of Robert v. Oscar, Oscar argues that Todd should be a defendant. Robert and Todd would argue in response that Todd was already found not negligent and his interests would not be harmed if the case proceeds without him. In this present case, Robert is the party seeking relief; if Todd is named a defendant, it would not disrupt the court from according complete relief.

ANALYSIS

The court will likely find that Todd is not a necessary party to this action.

Is joinder of necessary absentee feasible?

If an absentee is necessary they must be joined if feasible. It is feasible if the court has and will maintain personal jurisdiction over the absentee and subject matter jurisdiction over the claim.

RULE

ANALYSIS

Here, if the court does find that Todd is a necessary party, he must join the action if it is feasible. There are no facts to indicate that either personal jurisdiction or subject matter jurisdiction over the claim would be altered if Todd joins the action.

CONCL

If the court finds that Todd is necessary, they will likely find that it is also feasible for him to join the action.

ISSUE

What if absentee is necessary but joinder is not feasible?

RULE

If the court determines that an absentee is necessary but joinder is not feasible in equity and good conscious, the court must either proceed without A or dismiss the entire case.

ANALYSIS

Here, if the court determines that Todd is necessary and it is not feasible for him to join, then it must decide whether to proceed without Todd or to dismiss the case. In making this determination, the court looks to four factors: 1) the extent of prejudice to the absentee; 2) the extent to which the prejudice can be reduced or avoided; 3) the adequacy of a judgement rendered without the absentee, Todd; and 4) Whether the Plaintiff, Robert, will have an adequate remedy if the case is dismissed. The court will like determine that absentee Todd will not be prejudiced if the case is dismissed or proceeds without him. Additionally, a judgement rendered without the absentee, Todd, would be adequate to all the present parties involved in the case if it proceeds.

CONCLUSION

The court will likely find that the case can proceed without Todd.

ISSUE

Is Todd indispensable?

RULE

If the court decides to dismiss the case in equity and good conscious rather than to proceed, a necessary party whom it is not feasible to join is called an indispensable party.

Here, the court will likely find that Todd is not a necessary party to the action between Robert v. Oscar. And although it may be feasible for Todd to join the action, the case can proceed without him and still provide an adequate judgement and remedy.

The court will likely find that Todd is not an indispensable party.

The court in State X correctly ruled that Todd is not an indispensable party.

③ *

1b.

Intervention - Can Todd intervene?

Intervention occurs when a nonparty absentee may voluntarily become a party (either as a plaintiff or defendant) to a lawsuit in order to protect their interest. An absentee may intervene so long as the request is timely.

Intervention as of Right

A nonparty must be allowed to intervene when the nonparty claims an interest to the property or transaction which is the subject of the lawsuit, the disposition of the action in the absence of the intervenor would impair their ability to protect that interest, and the existing parties to the action cannot adequately protect the intervenor's interest. This request must be made timely, a matter which the court has the discretion to determine. Additionally, the court must have SMJ over the claim.

Here, Robert the plaintiff alleges that Oscar the Defendant injured him and is seeking damages. Todd was also injured by Oscar and thus has an interest in the transaction which is the subject of the lawsuit. Further, without Todd intervening in the action, the disposition may lead to relief for Robert but not Todd, although both were injured

and seek relief. If Todd is unable to intervene, his ability to protect his interest in the suit may be impaired. Finally, the existing parties to the case would not have Todd's interest in mind and cannot adequately protect those interests.

CONCLUSION The court will likely find that Todd may intervene as of right in order to be able to protect his interests.

Permissive Intervention

RULE A nonparty may intervene in a pending case in which they have at least one common question. This is discretionary with the court and typically allowed unless it will cause delay or prejudice to another party.

ANALYSIS Here, if the court finds that Todd cannot intervene as of right, they may allow Todd to intervene through permissive intervention. Todd was also injured by Oscar and thus has a common question with Robert: Was Oscar negligent such that they should be awarded relief for their injuries. Permissive intervention is discretionary, meaning that the court has the power to make the decision. The facts indicate that Todd filed his petition to intervene as a plaintiff in a timely manner. There are no facts that indicate that Todd's intervention would cause any prejudice to any other party.

CONCLUSION The court will likely find that Todd may intervene through permissive intervention.

The court in State X correctly ruled that Todd could intervene in the action of Robert v. Oscar.



1c.

ISSUE Crossclaim - Can Robert crossclaim against Todd?

NOTE
A claim by one party against a co-party if the claim arises out of the same transaction or occurrence ("T/O") of the original action or of a counterclaim, or if the claim relates to any property that is the subject matter of the original action. The crossclaim may include a claim that the co-party is or may be liable to the cross-claimant for all or part of a claim asserted. A crossclaim is not compulsory.

ANALYSIS
Here, Robert was a passenger in Oscar's vehicle when it collided with Todd's truck. Robert's crossclaim against Todd arises out of the same T/O as the claim against Oscar, the original claim. Since Robert was the passenger in Oscar's car and Todd was driving the truck that collided with Oscar, Robert is alleging that Todd is also liable to Robert for his injuries. Robert is thus seeking \$400,000 in damages against Todd, which is a portion of the full amount of damages he is seeking. Since a crossclaim is not compulsory Robert may assert the cross claim in this action, but he may also do so separately in another action if the court does not permit it.

CONCLUSION
The court in State X correctly ruled that Robert could assert a crossclaim against Todd.
* (S)

2.

Robert v. Oscar - Oscar's Interlocutory Appeal re court denial to dismiss case based on failure to join Indispensable party

An interlocutory appeal is an appeal of a non-final judgement.

FINAL JUDGMENT = NOTHING REMAINS TO BE DONE

ANALYSIS
Here, Robert sued Oscar in federal district court. Prior to trial, Oscar moved to dismiss the case based on failure to join an indispensable party. Oscar's motion was denied and the case proceeded. Because the case was not complete and had not yet entered final judgement, an interlocutory appeal was Oscar's only option.

ANSWER KEY
OCSA/NEER

The court will likely find that Oscar could properly file an interlocutory appeal as the case is still in litigation and is not complete.

Collateral Order

A circuit court may hear an interlocutory appeal of a non-final judgement if the appealed issue is: 1) distinct from the merits of the case, 2) involves an important legal questions, and 3) will be unreviewable if the parties wait for a final judgement.

Here, Oscar may petition for his denied motion to be heard at the circuit court because it is on a collateral issue. His motion was that the case should be dismissed for failure to join an indispensable party; this is different from the merits of the case (whether he was negligent to Robert). Further, Oscar's motion involves an important legal question to the determination of the action - whether Todd, a third party should have also been named a defendant in the case, thus splitting the cost of damages if any are found. If the parties wait for final judgement, Oscar may be found liable and thus his request to have Todd join will be null. It will be unreviewable and the court will not be able to decide if the case should have been dismissed.

The court will likely permit Oscar to file an interlocutory appeal on a Collateral Order.

USCFOLLOWERS OF
WHAT OF
MAYNARDUS?
→ NOT LIKELY AS
DENIAL OF MOTION WAS
CORRECT
(YOU DISAGREE)

THIS IS A NICE
PAPER - YOU VERY CLEARLY
EXPRESS THE CASE.
- NICE WRITING

80%



2)

DISCOVERY

Under Rule 26, a party may seek discovery of any non-privileged evidence which is relevant to a claim or defense provided that it is reasonably calculated to lead to admissible evidence. Evidence doesn't need to be admissible in court to be discoverable. However, a party is not entitled to discovery that will annoy, embarrass, oppress, or unduly cost/burden a person.

1a. MOTION TO ORDER THE PHYSICAL EXAMINATION

Under Rule 35, upon motion and for "good cause" shown, the court in which the action is pending may order a physical or mental examination of any party or a person in the custody or under the legal control of any party, if the physical or mental condition of the person to be examined is "in controversy". The examined has a right to a copy of the examiner's report.

IN CONTROVERSY - Here, the action is based on Diana striking and injuring Phil with her car and Phil filed a complaint seeking damages for negligence for physical injury. As a result, his physical condition is likely to be deemed "in controversy".

COURT ORDER - The court order may be made only on motion for good cause and on notice to all parties that the person is to be examined. It must specify the time, place, manner, conditions, and the scope of the exam as well as a person or persons who will perform it.

Here, Diana filed a motion for the court to order the physical examination which could be done at anytime. The facts state Phil objected so for the sake of argument we will assume he and all parties were given proper notice and that the order specified the time,



place, manner, conditions, and the scope of the exam as well as the person who will perform it.


GOOD CAUSE - The determination of good cause involves weighing the pain, danger, or intrusiveness of the examination against the need for, or usefulness of the information to be gained.

Here, Phil may argue that the order was made in June. As a result, the intrusiveness of the examination outweighs the need for or usefulness of the information since it was two months after the accident. In addition, he will argue that the court permitted Diana to depose Laura (the physician who treated him after the accident) which would provide more useful information. However, this is likely a weak argument if Diana wanted a medical examination to compare to the findings of Laura. The court is likely to determine there is good cause for the medical examination.

CONCLUSION - It is likely to be determined that the court did not err in granting Diana's motion to order the physical examination since it is relevant, his physical condition is "in controversy", there was good cause and a proper motion and court order. However, the court may limit the discovery if they determine it is duplicative/cumulative due to the deposition of Laura or that the deposition of Laura would be a less burdensome alternative.

1b. MOTION TO ORDER THE MENTAL EXAMINATION

Under Rule 35, upon motion and for "good cause" shown, the court in which the action is pending may order a physical or mental examination of any party or a person in the custody or under the legal control of any party, if the physical or mental condition of the person to be examined is "in controversy". The examined has a right to a copy of the examiner's report.

IN CONTROVERSY - Here, the action is based on Diana striking and injuring Phil with her car and Phil filed a complaint seeking damages for negligence for physical injury. As a result, his mental condition is likely to NOT be deemed "in controversy". 

COURT ORDER - The court order may be made only on motion for good cause and on notice to all parties that the person is to be examined. It must specify the time, place, manner, conditions, and the scope of the exam as well as a person or persons who will perform it.

Here, Diana filed a motion for the court to order the physical examination. The facts state Phil objected so for the sake of argument we will assume he and all parties were given proper notice and that the order specified the time, place, manner, conditions, and the scope of the exam as well as the person who will perform it.

GOOD CAUSE - The determination of good cause involves weighing the pain, danger, or intrusiveness of the examination against the need for, or usefulness of the information to be gained.

Here, the intrusiveness of the mental examination is not likely to be outweighed by the need for or usefulness of the information since there are no facts to support that Phil's mental condition is in controversy. As a result, the court is likely to determine that there is not good cause.

CONCLUSION - Unless Diana can show the material from the medical examination is relevant to a claim or defense of any party in the action, the medical examination is likely to be deemed beyond the scope of discovery. As a result, it is likely to be determined the court erred in granting the mental examination of Phil.

DIANA MUST MAKE AN AFFIRMATIVE SHOWING THAT PHIL'S MENTAL STATE IS IN CONTROVERSY

2. DIANA DEPOSING LAURA - RULE 30

Rule 30 states depositions by oral examination allows a party to question any person whether a party or not, under oath. The deposition is limited to one day of seven hours, but the court may provide addition time if necessary. Each party is limited to 10 depositions. If the deponent is a party a subpoena isn't necessary, but reasonable notice in writing to every other party is required. If the deponent is a non-party a subpoena is not required but the nonparty is not subject to any sanction if he is not subpoenaed and doesn't appear. Objections are interposed at depositions to preserve the right to object to the other party's use of the deposition's transcript at trial.

OBJECTION #1
Here, Phil objected on the ground that Laura could not be deposed because she was not a party. The court properly overruled this objection since depositions allows a party to question any person regardless if they are a party or not. The facts don't state that Laura was subpoenaed and if she wasn't then she doesn't have to appear.

OBJECTION #2
In addition, Phil objected that deposing her would violate the physician-patient privilege, but if during the deposition the opposing party asks questions during deposition that are covered by the physician-patient privilege they should interpose that objection at the deposition since the privilege prevents Laura from disclosing privileged information but not from the entire deposition. *WHAT ABOUT THE PHYSICIAN/PATIENT-LITIGANT?*

CONCLUSION - The court didn't err in permitted Diana to depose Laura. *EXCEPTION?*

3. MOTION TO STRIKE PHIL'S DEMAND FOR A JURY TRIAL

The 7th Amendment preserves the right to a jury trial for actions involving legal questions (action at law) not equitable questions (actions at equity) that meet the minimum statutory amount. There is a waiver of a constitutional or statutory right to trial by jury if neither party makes a timely written demand for trial by jury on the issue as provided in Rule 38 which states no later than 14 days after the last pleading directed to the issue is served,

although the court MAY in its discretion upon motion relieve such waiver or the parties may consent to withdraw a demand for jury trial. The modern test to determine if a party has a right to a jury trial is the remedy sought by the plaintiff is legal or equitable in nature. Federal courts recognize a public rights or public good exception to the right to a jury trial (doesn't apply in this case).

Here, Phil didn't file a demand for a jury trial under September and only a few weeks before trial. As a result, we will assume it wasn't timely and then it is at the court's discretion.

CONCLUSION - The court did not err in granting Diana's motion to strike phil's demand for a jury trial.

Very thorough!
well-written
complete
85%

3)

1.

Judgement as a Matter of Law - Dave's Motion

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

Here, John sued Dave in state court for personal injuries caused by Dave's treatment. Dave answered by a motion for JMOL which the court denied. At the time of Dave's motion, he had been served with the initial complaint and his motion was the very first response. A proper motion for JMOL is made at the close of the opposing party's case. At this point in time, John had just began his case and was not anywhere near closing it. Dave's motion was improper and made too soon in the proceedings. Further, the court must view the evidence in the light most favorable to the non-moving party, in this case John. Allowing Dave's motion to proceed would be unfavorable to John.

5/3/20

The court was correct in denying Dave's motion for judgement as a matter of law.

2.

Motion for Summary Judgement - Dave's Motion

Either party may move for a summary judgement within 30 days of the close of discovery. Summary judgement is proper where there is no genuine disputes of material fact such

that the moving party is entitled to judgement as a matter of law. The court must construe the evidence in the light most favorable to the non-moving party and resolve all doubts in favor of the non-moving party. A genuine issue of material fact exists when a reasonable jury could return a verdict in favor of the non-moving party. Any evidence considered on a motion for summary judgement must be 1) under oath and 2) firsthand. Hearsay is inadmissible.

Here, in January 2020, John sued Dave in federal court in State B to recover six months of lost wages. Dave immediately filed a motion for summary judgement, and the court granted the motion. At the time of Dave's motion, he had been served with the initial complaint and his motion was the very first response. A proper motion for summary judgement is made within 30 days of the close of discovery. At this point in time, John has only served the initial complaint on Dave. John nor Dave had initiated any discovery or disclosed any discovery to the other party. At this early stage of the case there were likely still genuine disputes of material fact because the facts had simply not yet been addressed, or even attempted to be obtained. Dave's motion was improper and made too soon in the proceedings.

CLAIM PRECLUSION?

The court was incorrect in granting Dave's motion for summary judgement.

3.

Max v. Pill Pharmaceuticals

Full Faith & Credit Clause

If two cases are in different judicial systems, the court in the second case must apply the applicable preclusion law of the judicial system that decided the first case. This is referred to as intersystem preclusion.

Here, in February 2020 a final judgement after trial was obtained in *Max v. Pill Pharmaceuticals*. In March 2020, John sued Pill Pharmaceuticals in State C, relying solely on the judgement in *Max v. Pill Pharmaceuticals*. If the first case involving Max was in any other judicial system other than State C court, the Full Faith and Credit Clause ensures that the judgement is applicable and enforceable. Therefore John may properly rely on the judgement from *Max v. Pill Pharmaceuticals*.

The court will likely find that the Full Faith & Credit Clause will have an effect on John's case in State C.

Issue Preclusion/ Collateral Estoppel

Issue preclusion precludes the relitigation of identical issues in a subsequent lawsuit which was actually litigated and necessarily determined in the prior suit.

1. The judgement on the issue was Final, Valid, and On the Merits

A judgement is final if the trial court has nothing left to do in the case. A judgement is valid as long as it is not void (i.e. for lack of SMJ, PJ, or based on fraud, etc.). And a judgement is on the merits if it is based on actual litigation between parties, a default judgement or an involuntary dismissal related to the merits. Some involuntary dismissals do not involve the merits and are not considered judgement on the merits (i.e. lack of jurisdiction, improper venue, failure to join indispensable party, etc.).

Here, the facts indicate that in February 2020 a final judgement after trial was obtained in the first case: *Max v. Pill Pharmaceuticals*. There are no facts to indicate that the

judgement is not final, valid and on the merits. The case was decided and the court has nothing left to do. The case went to trial and was decided on the merits.

The court will likely find that the judgement on the issue was final, valid, and on the merits.

2. The issue is the same

The issue, facts, and applicable law relevant to the issue to be precluded in the second case must be identical to the first case. Similarity of issues is not enough.

Here, in the original case, Max sued Pill Pharmaceuticals alleging a defective design that caused injury. In the second case, John is suing Pill Pharmaceuticals alleging the same. The issues, facts and applicable law would be the same in the second case as the first. *

The court will likely find that the issue in the first and second case is the same.

3. The issue was actually litigated

The issue must have been actually litigated and determined in the first case. Thus, if a default or consent judgement was entered, there is no issue preclusion.

Here, the facts indicate that the case of *Max v. Pill Pharmaceuticals* went to trial and a final judgement was obtained. *

The court will likely find that the issue was actually litigated.

4. The issue was necessarily determined

The issue determined was essential to the judgement. * One must consider that the finding on the issue is the basis for the judgement.

Here, *Max v. Pill Pharmaceuticals* was litigated to determine if there was a defective design of the medication. The facts indicate the case went to trial and a final judgement was entered.

The court will likely determine the issue was necessary determined.

5. There were Due Process and Mutuality considerations *

Against Whom

Issue preclusion may only be asserted against someone who was a party (or in privity with a party) to the initial case. This requirement is imposed by Due Process.

Here, a claim of issue preclusion in *John v. Pill Pharmaceutical* which would be asserted by Pill Pharmaceuticals is proper because they were a party to the initial case. That means they had an opportunity for due process in the initial case and it may potentially be asserted in the second case.

By Whom

Mutuality Rule (minority view) - Issue preclusion may only be asserted by someone who was a party (or in privity with a party) to the previous case.

Bernhard Rule (majority view) - This is an exception to the mutuality rule where a nonparty to a prior case is permitted to use a prior judgement so long as the party against whom the judgement is raised was a party (or in privity with a party) to the first case and had a full and fair opportunity to litigate the issue.

Non-mutual Offensive Issue Preclusion - Permissible only if it is fair to the Defendant in second case.

Here, under the mutuality rule, Due Process and mutuality considerations would be violated by allowing John to shield or defend himself against an issue preclusion claim. The mutuality rule only allows issue preclusion to be asserted by parties to the original claim. However, under the majority Bernhard Rule, John is a non party to the first case and is permitted to use the prior judgement consistent with a non-mutual offensive issue preclusion theory. To do so, the court would have to determine that it is fair to the defendant in second case, also Pill Pharmaceuticals. In deciding this, the court will consider 1) whether defendant had full and fair opportunity to litigate - they did in the first case; 2) whether multiple lawsuits are foreseeable - if the pill is defective as it was determined in the first case then there will be multiple foreseeable lawsuits; 3) Plaintiff from second case could not have easily joined the first case - at the time of the first case, plaintiff had not yet been injured so it would not have been possible; and 4) there are no inconsistent judgements on the issue - there are no inconsistencies since there is only one judgement.

The court will likely find that there are sufficient Due Process and Mutuality considerations.

The court will likely conclude that Pill Pharmaceuticals has a valid claim of issue preclusion which will have an effect on John's case in State C.

END OF EXAM