

SAN LUIS OBISPO COLLEGE OF LAW

Civil Procedure Final Examination
Spring 2020

Prof. M. Rivas

INSTRUCTIONS:

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

Question 1

While driving, Darcy struck and injured Parker. Parker filed a complaint in federal district court, based on diversity jurisdiction and seeking damages for negligence for physical injury. Parker filed a timely demand for a jury trial. Darcy filed an answer denying negligence. The parties then engaged in discovery.

During discovery, Darcy filed a motion with the court requesting an order for both a physical and mental examination of Parker. Parker objected, but the court ordered Parker to submit to both examinations.

Later, Parker received a notice to depose Dr. Spock, the doctor that treated Parker at the ER after the accident. Darcy had previously conducted ten depositions. Parker advised Dr. Spock of the scheduled deposition and Dr. Spock was deposed, but didn't remember anything about Parker or Parker's injury. Dr. Spock explained that there are a lot of patients that visit the ER and it would be impossible to remember the details of every one.

Afterwards, Darcy attempted to discuss the issue with Dr. Spock and arrange a new date for deposition. Dr. Spock told Darcy he was busy and would no longer cooperate. Darcy made a motion requesting that Dr. Spock be held in contempt for failure to comply with a court order, as well as a motion compelling Dr. Spock's deposition.

Later, Parker withdrew his demand for jury trial. Darcy objected.

1. Did the court err in granting Darcy's motion to order the physical and mental examinations of Parker? Discuss.
2. A) What objection(s) could Parker have made prior to the deposition of Dr. Spock? Discuss.
B) How should the court rule on Darcy's contempt motion and motion to compel discovery? Discuss.
3. How should the court rule on Darcy's objection to the withdrawal of Parker's demand for jury trial? Discuss.

San Luis Obispo College of Law
Civil Procedure
Spring 2020
Prof. M. Rivas

Question 2

Paulette was driving through a busy interchange where she was involved in an accident with a taxi driven by Damien, an independent contractor. Paulette sued Damien in a negligence action seeking monetary damages for her injuries, a broken clavicle and a broken wrist. At trial, a jury found that Damien's negligence was the sole cause of the accident. The jury then awarded Paulette \$20,000 for her injuries.

Emboldened by her win against Damien, Paulette decided to sue the taxi owner, Dexter. Paulette alleged that Damien had been found solely responsible for her injuries and therefore Dexter was vicariously liable. Paulette moved for partial summary judgment against Dexter based on the jury finding Damien negligent in the prior action. The court denied the motion.

After six months of extensive physical therapy, it was discovered that Paulette's injuries were worse than originally believed and that Paulette would require additional treatment and surgery. Paulette wishes to file another suit against Damien seeking additional damages of \$100,000.

1. Did the court err when it denied the partial motion for summary judgment in the case against Dexter? Discuss.
2. May Paulette sue Damien a second time? Discuss.

San Luis Obispo College of Law
Civil Procedure
Spring 2020
Prof. M. Rivas

Question 3

Pat lived in New York City and met Dax there, finding that they shared a love for all things related to the world of wizards. Dax invited Pat home, to see a book Dax was selling. The book was hand-written and illustrated, and contained tales by a bard who was famous in wizarding circles. Dax showed Pat a printed article describing that the author had created seven of these handcrafted books. Dax then showed Pat another printed article showing that one of the books had sold at auction five years prior for \$467,000. Neither of the articles included pictures of the book. In fact, both articles appeared to have small sections cut out. Dax told Pat that, based on the articles, the book was worth \$500,000. Dax assured Pat that it would sell for at least that, and that Dax had another wizarding friend that was coming to look at the book later that same day. Pat agreed to buy the book on the spot and paid the \$500,000.

While at Dax's house, Pat decided that Dax had great taste and so asked if Dax had any other items for sale. After a brief discussion, Pat made a separate agreement to buy Dax's home for \$1.2M. The sale would take place in two weeks.

One week before the sale of the house was to be completed, Pat met with a very reputable auction house to arrange for the sale of the book at auction. The auction house's appraiser looked at the book and informed Pat that the book was not worth the paper and ink used to create it. Pat was devastated. Pat contacted Dax, warning that Dax should expect to be sued. Dax responded by refusing to sell Pat the house.

Pat promptly filed suit for fraud, claiming that Dax had "committed fraud in the valuation," and seeking \$500,000 in damages. Pat also claimed breach of contract as to the sale of the house and sought specific performance. Three weeks after filing, Pat demanded jury trial on all issues.

1. May Pat join the fraud and breach of contract claims against Dax? Discuss.
2. A) Is Pat's complaint sufficient to state a claim for fraud? Discuss.
B) What motion should Dax bring in response to Pat's complaint for fraud? Discuss.
3. May Pat receive a jury trial? On what issues, if any? Discuss.

Question 1-Answer Outline

1. Did the court err in granting Darcy's motion to order the physical and mental examinations of Parker? Discuss.

While driving, Darcy struck and injured Parker. Parker is seeking damages for negligence for physical injury.

Scope of discovery

Any relevant, non-privileged matter that is proportional to the needs of the case.

Physical Exam: Court did not err.

Requires court order. Physical condition must be at issue and there must be a showing of good cause.

Mental Exam: Court erred.

Mental condition not at issue.

2. A) What objection(s) could Parker have made prior to the deposition of Dr. Spock? Discuss.

Parker received a notice to depose Dr. Spock. Dr. Spock is the doctor that treated Parker at the ER after the accident. Darcy had previously conducted ten depositions.

Notice

Witness was not given notice.

Doctor-patient privilege

Doesn't apply because plaintiff put physical condition at issue.

Number of allowable depositions exceeded.

Only 10 depositions allowed. Additional depositions require leave of court or stipulation of the parties.

Extra: Choice of law

- B) How should the court rule on Darcy's contempt motion and motion to compel discovery? Discuss.

Parker received a notice to depose Dr. Spock. Parker advised Dr. Spock of the scheduled deposition. Dr. Spock was deposed, but didn't remember anything about Parker or Parker's injury. Dr. Spock explained that there are a lot of patients that visit the ER and it would be impossible to remember the details of every one. Afterwards, Darcy attempted to discuss the issue with Dr. Spock and arrange a new date for deposition. Dr. Spock told Darcy he was busy and would no longer cooperate.

Depositions generally

Compulsory appearance of witnesses

Subpoena required.

Failure to comply with court order

Notice was not sent to witness, but to party. Notice to party is not a court order to non-party. No subpoena.

Motion to compel discovery

Witness must participate in good faith. Evasive or incomplete answers are deemed as failure to make discovery. Movant must show that an attempt was made to avoid court intervention.

3. How should the court rule on Darcy's objection to the withdrawal of Parker's demand for jury trial? Discuss.

Parker filed a timely demand for a jury trial. Later, Parker withdrew his demand for jury trial. Darcy objected.

Right to jury trial

Demand must be timely made. May be withdrawn, but requires all parties to consent.

Question 2-Answer Outline

1. Did the court err when it denied the partial motion for summary judgment in the case against Dexter? Discuss.

At trial, a jury found that Damien's negligence was the sole cause of the accident. Emboldened by her win against Damien, Paulette decided to sue the taxi owner, Dexter. Paulette alleged that Damien had been found solely responsible for her injuries and therefore Dexter was vicariously liable. Paulette moved for partial summary judgment against Dexter based on the jury finding Damien negligent in the prior action.

Summary judgment

May be granted if, from the pleadings, affidavits, and discovery materials, it appears that there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.

Partial summary judgment

May be rendered as to issue of liability, even though there is an issue as to damages.

Issue preclusion (collateral estoppel)

Requires: final judgment, issue actually litigated and essential to judgment.

The party to be bound must have been party to the prior action or in privity.

2. May Paulette sue Damien a second time? Discuss.

Paulette sued Damien in a negligence action seeking monetary damages for her injuries, a broken clavicle and a broken wrist. At trial, a jury found that Damien's negligence was the sole cause of the accident. The jury then awarded Paulette \$20,000 for her injuries. After six months of extensive physical therapy, it was discovered that Paulette's injuries were worse than originally believed and that Paulette would require additional treatment and surgery. Paulette wishes to file another suit against Damien seeking additional damages of \$100,000.

Claim preclusion (res judicata)

Valid, final judgment on the merits bars the same cause of action in a later lawsuit between the same parties.

Question 3-Answer Outline

1. May Pat join the fraud and breach of contract claims against Dax? Discuss.

Pat filed suit for fraud against Dax. Pat also claimed breach of contract as to the sale of the house against Dax.

Joinder of claims

A plaintiff can join any number and type of claims against a defendant.

2. A) Is Pat's complaint sufficient to state a claim for fraud? Discuss.

Dax showed Pat a printed article describing that the author had created seven of these handcrafted books. Dax then showed Pat another printed article showing that one of the books had sold at auction five years prior for \$467,000. Neither of the articles included pictures of the book. In fact, both articles appeared to have small sections cut out. Dax told Pat that, based on the articles, the book was worth \$500,000. Dax assured Pat that it would sell for at least that, and that Dax had another wizarding friend that was coming to look at the book later that same day.

The auction house's appraiser looked at the book and informed Pat that the book was not worth the paper and ink used to create it.

Pat promptly filed suit for fraud, claiming that Dax had "committed fraud in the valuation," and seeking \$500,000 in damages.

Complaint

Requires a short statement of jurisdiction, short statement of the claim showing pleader is entitled to relief, and a demand for judgment for relief.

Special pleading requirements for fraud

Must state with particularity those circumstances that establish fraud.

- B) What motion should Dax bring in response to Pat's complaint for fraud? Discuss.

Pat promptly filed suit for fraud, claiming that Dax had "committed fraud in the valuation," and seeking \$500,000 in damages.

Rule 12(b)(6)

Failure to state a claim upon which relief can be granted. Pat did not properly plead fraud.

3. May Pat receive a jury trial? On what issues, if any? Discuss.

Pat filed suit for fraud as to the sale of the book and sought \$500,000 in damages. Pat claimed breach of contract as to the sale of the house and sought specific performance.

Right to jury trial

Seventh Amendment guarantees jury trial. The guarantee turns on whether the remedy is legal or equitable.

Timing

Demand for jury trial must be made within 14 days of service of last pleading directed to jury triable issue. After that, court may use its discretion to grant demand.

Legal claim

Suit seeking monetary damages is a legal claim and guaranteed a jury trial.

Equitable claim

Specific performance is an equitable claim and is not guaranteed a jury trial.

1)

Was the order for the Physical and Mental Proper?

The order for the physical exam was proper but the mental exam was not relevant or proportional to the cause of action.

Choice of Law

Here we are in Federal Court on a negligence claim based on Diversity. The Federal Rules of Civil Procedure will apply. The federal court will have to have subject matter jurisdiction based on complete diversity of citizenship and a claim amount in excess of 75k. The court will also have to have personal jurisdiction. For the purposes of this question it is assumed that those requirements are met.

Erie

For Diversity claims in Federal Court, Erie requires that the court follow state substantive law and federal procedural law.

Discovery

Unless the court has ordered otherwise, a party may order discovery on any non-privileged matter that is relevant to any party's claim or defense and proportional to the needs of the case. A party may not seek discovery until a Rule 26(f) hearing has occurred. Every discovery request must be signed by the party or at least one of his attorney's and it must state the signors name address and telephone number. The scope of discovery must be both relevant and proportional to the cause of action.

Here we are told that Parker filed his complaint and Darcy filed her answer denying negligence. The fact pattern then states the parties engaged in Discovery. This was proper so long as they comported with the requirements of the 26(f) hearing. If there was no hearing, discovery of any kind would not be permitted. For the purposes of this exam, we assume that discovery was properly initiated.

Motion to Order Physical and Mental Exam of Parker

An order for examination provides for an independent physical and/or mental examination of a party when the party's physical or mental health is at issue or for good cause. The court may order the party whose physical/mental health is in controversy to submit to an exam.

Here, the defendant filed a motion with the court requesting an order for both physical and mental examinations. The request was proper because Parker claims that when Darcy struck him, he was injured. Parker is seeking damages for physical injuries he sustained as a result of the accident. Parker has put his physical health at issue. The order for the physical exam is proper.

The order for the mental exam is a problem. The fact pattern is silent to any mental health problems. Parker is not making a claim for mental health damages and as such he has not placed them at issue. Further, there are not facts to support a "good cause" reason. The mental health examination exceeds the scope of discovery. It is not relevant or proportional to the cause of action.

The court was proper in ordering the physical exam but it erred in ordering the mental exam.

What Objections Could Parker Make?

Parker can object on the basis of lack of subpoena and the fact that Darcy will exceed 10 depositions.

As aforementioned, any party may order discovery on any non-privileged matter that is relevant to any party's claim. The request must be relevant and proportional to the cause of action.

Here, Darcy moved to depose Dr. Spock, the doctor that treated Parker at the ER. after the accident. Darcy's discovery request is both relevant because Dr. Spock would have seen the extent of Parker's injuries shortly after they happened. So long as the scope of her questions in the deposition were proportional, she should be permitted to depose the doctor.

Objections

However, Parker will object on the basis that Darcy has exceeded her allowable number of depositions. He may also object on the basis that the doctor was not properly subpoenaed.

Lack of Subpoena

A party may not take more than 10 depositions and may not interview the same party twice. Reasonable notice must be given to parties. The notice must state the time date and place. It must not exceed one 7 hour day absent a court order. Depositions must be taken by an officer of the

court and both party's must attend. It must include the deponents names and addresses. Non-parties must be subpoenaed. The subpoena is issued by the court clerk. It must state what court it was issued by and the type of action. It must include the civil case number and it must command the person it is directed towards to follow specific instructions, attend the hearing and possibly provide other evidence. The subpoena must be properly served and proof of service must be given to the clerk.

Here, Parker received a notice to depose Dr. Spock. Dr. Spock is not a party to the action and the Federal Rules of Civil Procedure (FRCP) requires that he be subpoenaed to be mandated to show. There is no evidence in the fact pattern that demonstrates that he was properly served. Parker advised Dr. Spock of the scheduled deposition, but that his irrelevant. Dr. Spock was under no obligation to comply with the notice but, Dr. Spock showed up voluntarily. Dr. Spock was deposed but could not remember anything. Doctor Patient Privilege does not apply because Parker has placed his physical condition at issue.

Number of Depositions

As aforementioned, a party may not take more than 10 depositions absent a court order. Here, Darcy had already taken ten depositions previously. Dr. Spock would have been the eleventh and as such would have exceeded her allowable amount.

Parkers objections should be based on the lack of subpoena and the fact that Darcy had exceeded ten depositions prior to noticing Parker of her desire to depose the doctor.

Can Darcy successfully motion for contempt and to compel?

No Darcy has not comported with the requirements for either motion.

Contempt

A motion for contempt is an enforcement option for a party when the opposing party has failed to follow a court order. It is essentially a disciplinary action that can also be accompanied by sanctions. It is decided by the trier of fact.

Here, Darcy is motioning the court to hold Dr. Spock in contempt of court because when she approached him to discuss the issue, Dr. Spock told her he was too busy and would no longer cooperate. Dr. Spock was not properly subpoenaed and as such has not violated a court order.

Further, he appeared willingly for the first deposition but could not remember anything because he treats lots of patients at the ER and it would be impossible to remember.

The motion for contempt will fail.

Motion to Compel

A motion to compel is an enforcement tool that a party may use to request the court to order the opposing party to comport with a discovery request. Evasive and incomplete responses are grounds for a motion to compel. The requesting party must first certify that they have attempted to gain compliance with the opposing party. If a motion is required the non-moving party may be responsible for attorney fees and costs, unless the non-compliant party can substantially justify the failure to appropriately respond.

Here Darcy has exceeded her permitted number of depositions and failed to properly subpoena the doctor. She may be basing her motion to compel on the grounds that he answered incompletely, but the doctor answered honestly and if called into court to defend his answers he will be able to substantiate the reasons based on his prior answers to Darcys questions. If the court denies Darcy's motion to compel, she will be responsible for court costs and fees associated with the doctor's appearance. The court may also place a protective order and require Darcy to pay costs.

Darcy's motion to compel will fail and she is likely going to have to pay court costs and fees.

May Parker withdraw his right to a Jury Trial?

No, because Darcy is not willing to stipulate.

Right to a Jury Trial

The 7th Amendment preserves the right to a jury trial in federal court in all civil suits of common law where the amount in controversy exceeds \$20. It is based on the requirements of the law and equity courts of 1791. Further the Federal Court must permit a jury trial for any diversity suit at common law even if the state court prohibits it. This is because the 7th Amendment prevails over Erie.

Rule 38 requires a party who desires a jury trial to file a written demand with the court and serve it on the parties. The demand may be a part of the pleadings of either party. Failure to make the timely demand within 14 days of service of the last pleading directed at the court, constitutes a waiver. A court may with its discretion order a trial by jury if it finds that the waiver of the plaintiff

was not intentional. In the demand, the party may specify the portion of the trial that the party wants heard by a jury. The opposing party has the right to respond within 14 days.

Here we are told that Parker filed a timely demand for a jury trial. Darcy filed an answer by did not respond to the request for jury trial. Parkers claim is a claim for damages resulting from Parkers negligence. Negligence is a civil action and as such comports with the requirements of the 1791 court because at common law it would have been allowed. Parker's complaint is also in the Federal court and based on Diversity. Parker is requesting legal damages as a result of the injuries sustained when Darcy negligently struck him. Parkers cause of action meets the 7th Amendment requirements for a jury trial and was properly made.

Can Parker withdraw his request for a Jury Trial

In order for Parker to withdraw his right to a jury trial, he would have two options. First, he would have had to amend his complaint, removing the demand prior to the defendants answer. That did not happen. The fact pattern tells us that Darcy made a timely answer. The second option would be if both parties agree in writing to forego the jury trial.

Here we are told that Darcy objected to the request to withdraw. Because both parties are not in agreement, Parker may not withdraw his request for the jury trial.

END OF EXAM

2)

Question 2

1) Did the court err when it denied the partial motion for for summary judgment in the case against **Dexter**?

Summary Judgment

A motion for summary judgment may be granted if the moving party shows that there is no genuine dispute of material fact and the party is entitled to judgment as a matter of law. Summary judgment may be found in one of two methods. The moving party may either introduce evidence affirmatively negating an element that the non-moving party is required to establish or demonstrate that the non-moving party has no evidence to establish the non-moving party's claim or defense. In this case, the basis for Paulette's motion for summary judgment is collateral estoppel (issue preclusion) based on the issue of Damien (not Dexter) being found solely responsible for her injuries. She is trying to connect Dexter via vicarious liability. This would be an attempt to show that the defendant would not have a defense. As such, whether the issue preclusion is valid must be discussed.

Collateral Estoppel (Issue Preclusion)

Issue preclusion prevents relitigation in a subsequent suit of the same issue if there was 1) a valid, final judgment on the merits, 2) that was actually litigated, 3) and was essential to the judgment. The issue was actually litigated by a jury and the jury found that Damien's negligence was the sole cause of the accident. This was a final judgment, leading the the ultimate decision to award Paulette \$20,000 for her injuries.

Due process concerns

Issue preclusion, per due process, requires that the party that the plea is asserted against have been a party in or in privity in the prior action. Privity requires the non-party to have a substantive relationship to the party. Dexter was the taxi owner, not the taxi driver (Damien). The parties in the prior action were Paulette and Damien, not Paulette and Dexter. Dexter was likely not in privity with Damien. Damien was an independent contractor and per the concept of respondeat superior, employers are not liable for the actions of independent contractors. Only employees and employers

are in privity. There are no additional facts towards privity via another method (e.g. familial). Therefore, issue preclusion should not be used against Dexter for Damien's actions.

Decision on Summary Judgment

As the claim of issue preclusion is invalid, Paulette did not meet her burden for partial summary judgment. The court did not err in denying the motion for partial summary judgment in the case against Dexter. It actually may have been prudent for Dexter to request partial summary judgment based on the above noted lack of respondeat superior relationship, via defensive nonmutual collateral estoppel (to avoid liability).

2) May Paulette sue **Damien** a second time for additional, unexpected damages?

Res Judicata (Claim preclusion)

Claim preclusion bars litigation of all claims that were or could have been litigated in the original action. Claim preclusion requires 1) a valid, final judgment on the merits, 2) between the same parties, or those in privity, and 3) the same cause of action (transaction or occurrence) in the second suit as the first suit. Here, Paulette wants to sue Damien a second time for later discovered injuries that were worse than originally believed and required additional treatment and surgery.

Valid and Final Judgment

The jury in the prior trial found that Damien's negligence was the sole cause of the accident and awarded Paulette damages. A jury decision is final in a prior case. This was conclusively decided by the jury.

Same Parties

The parties in the first suit, Paulette and Damien, would match the parties in the second suit, as Paulette is seeking additional damages of \$100,000 against Damien

Same cause of action

Paulette wishes to file based on the same occurrence, the accident with a taxi driven by Damien which caused her prior and additional injuries.

As all three requirements are met, claim preclusion would be granted. However, the issue is whether or not a claim that was not considered in the prior action may now be considered in a later action.

Scope of the Claim

The scope of a claim includes all possible remedies based on the one set of facts. All claims, brought or not, merge into a judgment and are then later barred. Paulette's worsening of her prior injuries was from the same prior occurrence (the accident), which is the same set of facts. She lost the ability to claim this by not claiming it previously and it is now barred.

END OF EXAM

3)

May Pat (P) join the fraud and breach of contract claims against Dax (D)?

Yes, P may join the fraud and breach of contract claims against D

Joinder of Claims

A party may join as many claims in a single action as the party has against the opposing party. There is no requirement that all of the claims in a complaint be related.

Here, the issue is if P may join the fraud and breach of contract claims against D, and the answer is yes. Even though the claims are not similar in assertions, they both involve P as the plaintiff and D and the defendant. The goal in joining these two claims in one action is to resolve all disputes between the parties. It does not seem rational to require both parties to retain counsel twice, go through the process of trial twice, wasting double the amount of money and resources so each claim can be tried separately. Allowing P and D to settle both disputes by joining the claims contributes to the courts efficiency and ability to better serve the public.

(A) Is Pats (P) complaint sufficient to state a claim for fraud?

Because P only stated a conclusion of law in his complaint and not allegations of fact with *particularity* his complaint is insufficient to state a claim for fraud

Pleading - Complaint

Pleadings serve the function of giving notice to the opposite parties. A complaint, or a pleading that states a claim for relief, must contain (i) a short and plain statement of the grounds for jurisdiction, (ii) a short statement of the claim showing that the pleader is entitled to relief and (iii) a demand for relief. The short and plain statement of the claim

must include sufficient factual matter to state a plausible claim, meaning more than the possibility the defendant acted unlawfully.

Fraud Complaint

(i) a short and plain statement of the grounds for jurisdiction

The facts state the P lived in NY and that P met D there. D then invited P to his home, the facts are silent as to where D lived but it can be presumed D also lives in NY. If both P and D are domiciled in NY and P properly filed the complaint in the appropriate state court in NY, the court will have jurisdiction. P will be required to state this in his short and plain statement of the grounds for jurisdiction

(ii) a short statement of the claim showing that the pleader is entitled to relief and

In general the rules of pleadings is a short and plain statement. However in some situations the FRCP require a party to state more detail than simply short and plain statements. One of these situations is for a claim of fraud. Mistake or fraud MUST be stated with particularity, which is a much higher level of detail. In P's complaint he claimed D had "committed fraud in the valuation". This is a short and plain statement as required under the general rule of complaint requirements but is insufficient for a claim for fraud. P will need to give significantly more detail.

The rules the court will follow in order to see if the complaints is sufficient will include ignoring conclusions of law. Here P only states D *committed fraud*, this is a conclusion of law not a statement of fact. If the court were to only look at that initial statement it would have to ignore "committed fraud" and focus only on the allegations of facts. P will need to supply the court with the facts that surround this claim in order for them to assess the sufficiency of his complaint. Another rule the court looks at is the facts must support a plausible claim, not just a possible claim. In determining plausibility, the judge uses her own experiences and common sense. Thus this is very suggestive.

(iii) a demand for relief.

In P's complaint he states he is seeking \$500k in damages. This is sufficient for a demand for relief.

Because P only stated a conclusion of law in his complaint and not allegations of fact with ***particularity*** his complaint is insufficient to state a claim for fraud

(B) What motion should Dax (D) bring in response to Pats complaint for fraud?

Because P only stated a conclusion of law in his complaint and not allegations of fact with ***particularity*** his complaint is insufficient to state a claim for fraud. D should either bring a motion for failure to state a claim for which relief can be granted or a motion for a more definite statement.

Motion for failure to state a claim for which relief can be granted

Prior to filing an answer a defendant can file a motion to raise a number of defenses, one of them being a motion for failure to state a claim for which relief can be granted. As stated above, P's complaint is insufficient. When a motion for failure to state a claim is filed the court does not look at evidence, but only the face of the complaint. It ignore conclusions of law and only look at allegations of fact,. Because P's claim only lists conclusions of law the court is likely to grant D's motion for failure to state a claim for which relief can be granted.

Motion for a more definite statement

A party may move for a more definite statement when the complaint is vague or ambiguous that the response is not reasonably able to be prepared.

P claimed D "committed fraud in the valuation" but does not include the *valuation of what* or how the fraud was committed. This may not be the first time that D has acted in this manner and sold property that is not authentic. In order for D to be able to reasonably respond he needs to be aware of what he is responding to.

May Pat (P) receive a jury trial? On what issues, if any?

P will be entitled to a jury on the issue of fraud.

Right to a jury trial

The 7th amendment preserves the right to a jury trial in federal courts of facts in all suits of common law where the amount in controversy exceeds \$20. If the requirements of a jury trial are met (a remedy at law, not solely a remedy at equity) a party must request a jury within 14 days after service of the last pleading or else the right to a jury is waived.

The facts state that 3 weeks after filing P demanded a jury trial on all issues. A party must request a jury within 14 days after service of the last pleading, and P demanded a jury 3 weeks after filing the complaint. The facts are silent as to when the service of the *last* pleading was but if it was more than 1 week after P filed, his request for a jury trial would be timely and thus he would be entitled to a jury on the applicable issues.

Fraud

Fraud is likely a claim that existed in 1791. For the fraud claim the remedy sought is \$500k, significantly above \$20. This is a remedy at law and when considering the practical abilities and limitations of juries P will be entitled to a jury on this matter.

Breach of Contract

Breach of contract is also likely a claim that existed in 1791, however the remedy sought is specific performance. Specific performance is an remedy in equity and P will not be entitled to a jury on this issue, because there are not issues of fact that underline both of the issues. It will be likely that the legal issue of fraud will be be tried first and the court will be bound by the jury verdict for the bench trial if any facts overlap.

In conclusion, P will be entitled to a jury on the issue of fraud.

END OF EXAM