

Monterey College of Law  
Civil Procedure  
Final Examination  
Spring 2023  
Professor Isaac Adams

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

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Civil Procedure

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**Question one**

While working at a construction site, Perry fell from a platform he was standing on, injuring his back. He filed a lawsuit against his employer, Daniel's Construction, alleging that the platform was negligently assembled and sought damages for his injuries.

During discovery, Perry requested Daniel's Construction to produce the video recordings from the on-site surveillance cameras depicting the platform assembly. Daniel's Construction refused, claiming that because its counsel is in possession of the footage, it is protected under the work product doctrine. Perry filed a motion to sanction Daniel's Construction. Subsequently, Daniel's Construction subpoenaed Perry to undergo physical and mental examination, which Perry objected to, arguing that it was unnecessary and invasive, and sought a protective order.

Daniel's Construction filed a motion for summary judgment, arguing that Perry could not prove that Daniel's Construction was negligent.

- 1- Should Daniel's Construction produce the video recordings? Does the work product doctrine protect them?
- 2- How should the court rule on Perry's motion to sanction Daniel's Construction?
- 3- How should the court rule on Perry's physical and mental examination protective order?
- 4- How should the court rule on Daniel's Construction's motion for summary judgment?

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### **Question Two**

In January 2021, Paul and Max vacationed at the Deer Valley resort. On their first day, they rode the ski lift together to go up to the top of the mountain. Once they were ten feet above the ground, the ski lift sped up and stopped suddenly, causing Paul and Max to fall from their seat to the ground. Both Paul and Max were injured.

The next day, Paul, having a sore back, went to the local town's doctor, Dave. After the appointment with Dave, Paul's condition worsened. It was unclear whether Paul's health declined due to his skiing injury or Dave's improper treatment.

In March 2021, Paul filed a lawsuit against Dave to recover the cost of the treatment. Dave answered by filing a motion for a judgment as a matter of law, which the court denied. After the trial, the jury returned a verdict for Paul.

In July 2021, Paul's back pain became so unbearable that he filed a second lawsuit against Dave to recover for his personal injuries. Dave filed a motion to dismiss, arguing res judicata. The court granted the motion.

In August 2021, Max sued the Deer Valley resort, alleging that the resort was negligent in operating the ski lift. The jury returned a verdict for Max, and the resort appealed.

In September 2021, relying solely on the judgment in Max v. Deer Valley resort, Paul sued Deer Valley resort in state court in State C, alleging that the resort was negligent in running the ski lift.

- 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 to dismiss based on res judicata?
- 3- What effect, if any, does Max v. Deer Valley resort have on Paul's action in State C against the Deer Valley resort?

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**Question Three**

Samantha and Jason co-own a small jewelry store. In January 2022, Samantha and Jason ordered \$100,000 worth of jewelry from a jewelry wholesaler to be delivered in October 2022. In May 2022, Samantha and Jason had a personal conflict, and Jason stopped showing up to the store even though he was still a co-owner.

In August 2022, Jason filed a lawsuit against the wholesaler in state court A, which does not have jurisdiction over Samantha. Jason demanded that the court order the wholesaler to cancel the jewelry order and issue him a full refund. The wholesaler filed a timely motion to dismiss on the ground that Samantha was an indispensable party. The court denied the motion, and the wholesaler appealed. However, the court of appeals refused to hear the appeal.

- 1- Did the court err in denying the wholesaler's motion to dismiss?
- 2- Did the appeals court err in refusing to hear the appeal?

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