

San Luis Obispo College of Law

Civil Procedure

Final Examination

Spring 2024

Prof. M. Rivas

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question 1

Phoenix hosts a podcast called Brew-tiful Beans: Percolating Conversations About Coffee Culture and went to a new coffee shop to interview the owner, Del. The shop was designed to be tech-friendly, so Del made sure to have power strips on the floor throughout to allow customers to power their laptops or other devices. Phoenix tripped on one of the power strips as they were getting a cup of coffee before the interview. As Phoenix fell, the coffee spilled and created third degree burns on Phoenix's face.

Phoenix filed suit against Del in federal district court, based on diversity jurisdiction, alleging negligence and seeking damages. Additionally, Phoenix sought an injunction to stop Del from serving coffee at its current temperature of 190 degrees. Del filed an answer denying negligence, and the parties engaged in discovery. Phoenix made a timely request for a jury trial. After further reviewing the case, Phoenix decided that a bench trial would be more advantageous and withdrew the request for jury trial. A bench trial was held and the judge found for Del on all counts.

During discovery, Del called Phoenix and said they needed to see a couple of doctors to move forward with the case. Del advised Phoenix that they had made appointments for them: a medical exam of the burns, a mental health exam, and an eye exam beginning the following Wednesday at 10am. Del provided the necessary addresses. Phoenix refused to participate in any of the examinations. Del then filed a motion to compel Phoenix to have the examinations, which was granted in full.

Phoenix sent a notice to Del for his deposition. Del did not appear at the deposition. Phoenix rescheduled the deposition, and Del appeared at this second deposition but stated that he couldn't answer any questions. According to Del, as the owner of the coffee shop, he didn't know anything about the day-to-day operations. Phoenix filed a motion to compel Del to answer and asked for sanctions.

1. Was the Court correct to hold a bench trial on the negligence claim? On the request for injunction? Discuss.
2. Did the Court err when it granted Del's motion to compel in full? Discuss.
3. How should the Court rule on the motion to compel against Del? Discuss.

Question Two

In August 2023, Phin was walking along a busy street, lost in thought. Suddenly, Phin felt a sharp impact on their side and stumbled to the ground. As Phin looked up, they saw that it had been a cyclist, Dorsey, who had collided with them. The cyclist had been speeding down the sidewalk, rather than using the road. Phin's arm was injured and they struggled to stand after the accident. Phin's arm was broken. Their leg hurt, but Phin didn't believe that the injury to their leg was serious.

Phin sued Dorsey for the costs of their medical expenses related to the broken arm. In addition, Phin sought an injunction to stop Dorsey from riding on the sidewalk. Dorsey was found by a jury to have been negligent and damages were awarded to Phin. After the jury trial, a bench trial was held and the judge granted the injunction. Dorsey appealed as to the injunction, stating that the Court erred in not allowing the jury to decide the issue. Dorsey lost the appeal.

Dorsey then sued Wheelie Good Bikes, the bike shop from which they bought the bicycle. Dorsey remembered that the sales person had told them that the bicycle would "stop on a dime." Dorsey believed that the bicycle failed to function as promised and that the shop lied about the bike. In the complaint against the bike shop, Dorsey simply stated that the shop had sold them the bike and lied about the bike's capabilities. There were no other facts contained in the complaint. Wheelie Good Bikes filed a motion for failure to state a claim upon which relief can be granted.

In June 2024, Phin realized that their leg was not getting any better. Phin had been to several doctors and was finally referred for surgery to correct the hairline fracture that had been caused by the accident with Dorsey. Phin's surgery cost \$75,000, so Phin decided to sue Dorsey to recover that amount. Dorsey filed a motion for summary judgment.

In October of that same year, Phin was walking on that same busy street when they saw Dorsey barreling down the sidewalk. Phin had to jump out of the way to avoid being struck by Dorsey. As a result, Phin suffered a broken arm.

1. Did the Court rule correctly on Dorsey's appeal? Discuss.
2. How should the Court rule on Wheelie Good Bikes' motion for failure to state a claim upon which relief can be granted? Discuss.
3. On what basis will Dorsey argue the motion for summary judgment? How should the Court rule on Dorsey's motion? Discuss.
4. Will Phin be barred from bringing suit against Dorsey for the October 2024 incident? Discuss?

Question Three

One night in June 2023, Pipp and Porter were celebrating their birthdays together at The BeatBox, a record store/coffee house. That same night, The BeatBox was hosting an open mic. Dusty had just been fired from their job and decided to improvise a poem about it at the open mic. During their performance, Dusty got worked up and started to physically slam into several audience members, including Pipp and Porter. Dusty's actions caused Pipp to fall out of their chair and hit their head on the table. Porter was uninjured, but Dusty destroyed the Rolex watch that Porter had received for their birthday.

Six months after the incident, Pipp sued Dusty for her injuries. Dusty was found to be negligent against Pipp as an audience member and the jury awarded damages to Pipp. A month later, Porter sued Dusty for damages relating to the destruction of their Rolex watch and filed a motion for partial summary judgment. The Court granted Porter's motion.

1. Did the Court err when it granted Porter's motion for partial summary judgment? Discuss.
2. Use the same facts as above, but assume the following: Dusty won the jury trial against Pipp, and Dusty was the one to file a motion for partial summary judgment in Porter v. Dusty. How should the court rule on Dusty's motion for partial summary judgment? Discuss.

ANSWER OUTLINE

Question 1-Answer Outline

1. *Was the Court correct to hold a bench trial on the negligence claim? On the request for injunction? Discuss.*
Right to jury trial: Seventh Amendment guarantees jury trial for claims at law that exceed \$20.
Jury trial request: A party must request a jury trial no more than 14 days after the last pleading directed to the jury-triable issue is served. If the request is not timely made, the court has discretion to grant the request. If a party wishes to withdraw their request for a jury trial, all parties must agree to the withdrawal.
Legal/equitable claims: Suit seeking monetary damages is a legal claim and guaranteed a jury trial. An injunction is an equitable claim and is not guaranteed a jury trial. Where there are both legal and equitable claims, the action at law is to be heard first and the court is bound in the later equitable action by a jury's factual findings.

NEGLIGENCE CLAIM: Here, there is a right to a jury trial on the negligence claim for damages because that is a claim at law and it can be assumed that, given Phoenix's serious burns, the amount will exceed \$20. The injunction requested is an equitable claim, and so there is not a right to a jury trial on that claim.

Phoenix's request was timely, so there would be a jury trial as to the claim for damages. However, Phoenix changed their mind and withdrew the request. Where a jury trial request is withdrawn, all parties must agree to the withdrawal. Here, the facts do not state whether Del agreed to the withdrawal. If Del did not agree, then the Court must go forward with the jury trial. If Del did not agree, the negligence claim would be heard by the jury first. The injunction would be heard after, and the court will be bound by any factual findings made by the jury. Thus, the Court would only be correct to hold a bench trial on the negligence claim if Del agreed to the withdrawal.

INJUNCTION: Here, the request to stop serving the coffee at 190 degrees is an equitable claim, and thus there is no right to a jury trial attached to that claim. Thus, the Court was correct to hold a bench trial on this claim.

2. *Did the Court err when it granted Del's motion to compel in full? Discuss.*
Scope of discovery
Any relevant, non-privileged matter that is proportional to the needs of the case.
Physical/Mental Exams: Physical/mental exams of a party require a court order. Condition must be at issue and there must be a showing of good cause.

Here, Del did not request a court order for the examinations of Phoenix. Instead, he tried to get Phoenix to participate by calling them and making appointments for them. Even if Phoenix had agreed, this would not be proper. Phoenix's medical condition is clearly at issue because Phoenix is asking for damages for their injury. There are no facts suggesting Phoenix's eyesight is at issue. Nor are there any facts to suggest that their mental health is at issue. Thus, it can be assumed that Del would not be able to show good cause for those exams even if they had requested a court order. Phoenix is not required to submit to any of the requested exams because Del did not request an order from the court. Since Phoenix was not required to participate in any of the exams, the Court erred when it granted Del's motion to compel.

3. *How should the Court rule on the motion to compel against Del? Discuss.*
Compulsory appearance of witnesses
Notice is sufficient to compel attendance of a party at a deposition. Failure to comply may result in sanctions.
Motion to compel discovery
Movant must show that an attempt was made to avoid court intervention.

Here, the Court should find Del in contempt because Del is a party and notice is sufficient to compel a party to attend a deposition. Thus, Del's failure to attend the first deposition could subject them to sanctions for wasting

the time and money necessary to a deposition. Moreover, Del is obligated to participate in good faith. As owner of the coffee shop, Del is tasked with knowing or discovering facts relevant to the case. Del cannot simply say they don't know anything. Thus, Del's failure to participate in good faith in the second deposition could again subject them to sanctions for wasting the time and money necessary to a deposition. However, Phoenix must also show that they attempted to avoid court intervention.

If Phoenix can show that they attempted to avoid court intervention, then the Court should grant the motion to compel against Del.

Question 2-Answer Outline

1. *Did the Court rule correctly on Dorsey's appeal? Discuss.*

Right to jury trial: *Seventh Amendment guarantees jury trial for claims at law that exceed \$20.*

Jury trial request: *A party must request a jury trial no more than 14 days after the last pleading directed to the jury-triable issue is served. If the request is not timely made, the court has discretion to grant the request. If a party wishes to withdraw their request for a jury trial, all parties must agree to the withdrawal.*

Legal/equitable claims: *Suit seeking monetary damages is a legal claim and guaranteed a jury trial. An injunction is an equitable claim and is not guaranteed a jury trial. Where there are both legal and equitable claims, the action at law is to be heard first and the court is bound in the later equitable action by a jury's factual findings.*

An injunction is a form of equitable relief, which does not grant Dorsey a right to a jury trial. Where there are both equitable and legal claims, the trial court will hold a jury trial on the legal claims, followed by a bench trial on the equitable issues. Here, the trial court correctly held a bench trial on the injunction after the jury trial on the claim of negligence. The appellate court correctly upheld the trial court.

2. *How should the Court rule on Wheelie Good Bikes' motion for failure to state a claim upon which relief can be granted? Discuss.*

Motion for failure to state a claim

A defendant may file a motion for failure to state a claim upon which relief can be granted. This motion can be made any time prior to or at trial.

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.

Here, Dorsey failed to state a claim for fraud. Their conclusory statement that Wheelie Good Bikes had sold them the bike and lied about the bike's capabilities does not meet the requirement that fraud claims must be stated with particularity. The complaint does not provide any information for Wheelie Good Bikes to be on notice as to how to defend against the claim. Therefore, the Court should grant the motion.

3. *On what basis will Dorsey argue the motion for summary judgment and how should the Court rule on the motion? Discuss.*

Motion for summary judgment

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

Claim preclusion (res judicata)

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

Here, Phin has already sued and won against Dorsey once. There is no dispute of fact here. Dorsey has already been found negligent and a jury already awarded Phin damages for the injury to their arm. Phin may argue that the extent of the injury to their leg was unknown at the time of the first suit, but they will not prevail. Courts look to whether the second suit stems from the same transaction or occurrence as the first. Here, both the suit for the damages to Phin's arm and the suit for the injury to Phin's leg stem from the same accident. Thus, this second claim from Phin is barred. The Court should grant Dorsey's motion.

4. Will Phin be barred from bringing suit against Dorsey for the October 2024 incident? Discuss?

Claim preclusion (res judicata)

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

Here, Phin's claim is for a different accident and a new injury. Thus, this claim is not barred.

.....

Question 3-Answer Outline

1. Did the Court err when it granted Porter's motion for partial summary judgment? Discuss.

Motion for partial summary judgment

May be granted as to some but not all of the claims if from pleadings, affidavits, and discovery materials it appears there is no genuine dispute of material fact and moving party is entitled to judgment as a matter of law.

Issue preclusion (collateral estoppel)

A final judgment, where the issue was actually litigated and essential to judgment may bar litigation of the same issue.

As a sword

When used offensively, the party using issue preclusion generally must have been party to the prior action or in privity. However, courts will allow it where it is fair to the defendant to do so.

Here, Dusty was found negligent in the prior action and so Porter can use the previous action as a sword in their case against Dusty.

Here, Porter is trying to use the previous action as a sword against Dusty because Dusty was already found to be negligent. In the previous action, there was a valid final judgment in the form of a jury verdict in Pipp's favor. The jury specifically found Dusty to be negligent against Pipp as an audience member, so the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the judgment of negligence against Dusty. As the defendant in the previous action, Dusty was a party, so courts would likely consider it to be fair for Porter to use of the previous action as a sword against him.

Here, Porter can use a partial motion for summary judgment to focus the action solely on damages. The court will likely agree that the issue of negligence is precluded (see discussion above), leaving no dispute of material fact as to negligence. Thus, the court would find that Dusty is negligent for purposes of the instant action. This would leave only the issue of Porter's damages to be determined.

1. Use the same facts as above, but assume the following: Dusty won the jury trial against Pipp, and Dusty was the one to file a motion for partial summary judgment in Porter v. Dusty. How should the court rule on Dusty's motion for partial summary judgment? Discuss.

Motion for partial summary judgment

May be granted as to some but not all of the claims if from pleadings, affidavits, and discovery materials it appears there is no genuine dispute of material fact and moving party is entitled to judgment as a matter of law.

Issue preclusion (collateral estoppel)

A final judgment, where the issue was actually litigated and essential to judgment may bar litigation of the same issue.

As a shield

When used defensively, the party using issue preclusion must have been a party to the prior action or in privity. If used by a non-party, fairness to the non-party will be considered.

Here, Dusty was not found negligent in the prior action and so they can use the previous action as a shield in Porter's case against them.

Here, Dusty can use the previous action as a shield against Porter because Dusty was already found not negligent. In the previous action, there was a valid final judgment in the form of a jury verdict in Dusty's favor. By ruling for

Dusty, the jury specifically found Dusty not negligent against Pipp as an audience member, so the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the jury's verdict. As the defendant in the previous action, Dusty was a party, so courts would likely consider it to be fair for Dusty to use the previous action as a shield, especially since Porter was an audience member like Pipp.

Here, Dusty can use a partial motion for summary judgment to prove that they were not negligent. The court will likely agree that the issue of negligence is precluded (see discussion above), leaving no dispute of material fact as to negligence. Thus, the court would find that Dusty is not negligent for purposes of the instant action.

1)

1. Bench trial and request for injunction

Legal and Equitable Claims

Section 1 is all good BUT you should put in order of the call. So start w/ only legal then move on to equitable

✓ If a claim includes both legal and equitable claims, the legal claims will be tried by a jury first, and then the equitable claims will be heard by the court after that. The court is bound by findings of fact by the jury in the legal claims.

✓ Here, Phoenix is suing Del for negligence and damages for the injuries he sustained when he tripped on the power cord and spill burning hot coffee. He is also seeking an injunction to enjoin Del from continuing to sell such hot coffee. The negligence and damages claims are legal claims and the injunction is an equitable claim. Therefore, the jury, if there is one, will try the negligence claim first and then the court will try the injunction claim. The court will be bound by any findings of fact by the jury in the negligence matter.

Jury Trial

✓ The 7th amendment grants the right to a jury trial for all legal claims in excess of \$20.

Request for a jury trial

✓ To request a jury trial, a party must file a demand with the court and serve notice on all parties within 14 days of the last pleading directed to the triable issue. In order to withdraw a demand for a jury trial, the moving party must get consent from the other party.

Phoenix made a timely request for jury trial, but then changed his mind and withdrew the request because he decided he would rather have a bench trial. The facts don't state whether Del consented to the withdraw of the request for a jury trial. If Del consented, then the court was correct to hold. bench trial on the negligence claim. If Del did not consent, then it was not correct. The court was correct in holding a bench trial for request for an injunction, because as a claim in equity, it will always be heard by the court, not a jury.

conclusion?

2. Del's motion to compel

Scope of Discovery

Discovery may be had of all non-privileged matter relevant to a party's claim or defense and proportionate to the needs of the case.

Mental and physical examinations

Upon a show of good cause, discovery rules allow the court to order an independent mental or physical examination of a party if that party's condition is in controversy.

Here, only Phoenix's medical condition is in controversy because he is seeking damages for the burns he sustained from the hot coffee. There is nothing in the facts to say that his vision or his mental health are at issue. Perhaps Del could claim that Phoenix failed to see the power cord and therefore his eyesight is in controversy, but Phoenix will argue that there is nothing wrong with his vision. Therefore, only Phoenix's medial condition could warrant an examination.

Also, Del has chosen the doctors and made the appointments for Phoenix. The examinations are independent examinations and therefore, Del should not be able to choose the doctors for Phoenix.

not at issue here
but good job not making
it a big deal.

Perhaps most importantly, Del did not motion the court for an order for Phoenix's medical, mental health, and eye exams. Instead, he called Phoenix directly and told him that he had already made appointments for him. Because Del did not motion the court with a show of good cause, and because not all of his requests were related to conditions in controversy, Phoenix does not have to comply with Del's request.

Motion to compel

A party may request a court order to compel discovery. *Movant must show an attempt @ meet + confer to avoid court intervention.*

Here, Del has filed a motion to compel Phoenix to have all three examinations. Because there was no court order for the examinations, Phoenix cannot be compelled to submit to the examinations. *[The court erred when it granted Del's motion to compel.]*

← CONCLUSION

3. Phoenix's motion to compel

Scope of discovery - see rule above

Depositions

A deposition is an examination of a witness under oath. All parties must receive notice of the date, time, location, and deponents name and address. A party may take no more than ten, nor depose a person more than once without leave of the court or stipulation by the parties. A party may be deposed and a non-party deposed by subpoena. *Notice compels attendance of a party + subpoena is required to compel attendance of non-party*

Here, Phoenix gave Del notice for his deposition, but Del failed to appear. When Phoenix rescheduled the deposition, Del appeared, but failed to answer any questions and claimed not to know anything about the day-to-day operations of the cafe he owned. It is highly unlikely the owner of the cafe, who is clearly involved in the operation of the cafe because he carefully designed it to be tech-friendly, doesn't know enough to answer the questions.

either he's lying or he's required to inquire + be able to answer.

Even though he has attended one deposition, he did not cooperate and therefore is not subject to the one deposition per person rule. *May be held in contempt for non-attendance + sanctions for failure to attend, & not participating in good faith/wasting time.*

Motion to compel - see rule above

Because Del is a party and was given notice, has missed one deposition and refused to cooperate at another, he can be compelled to attend a deposition and fully answer all the questions. The court should grant Phoenix's motion.

Sanctions

If a party with notice or a non-party with a subpoena refuses to cooperate, refuses to answer questions, or only gives incomplete information, the other party may petition the court for sanctions. Sanctions are usually monetary penalties.

Here, because Del is a properly noticed party who has missed one deposition and refused to cooperate at another, the court may properly grant Phoenix's request for sanctions.

fresh this out a bit. Cost of room, attys, court reporter...

END OF EXAM

2)

1. Dorsey's Appeal

Right to Jury Trial

The 7th amendment grants the right to a jury trial for any legal ^{claims} dispute involving \$20 or more, ~~while equitable claims are decided by a judge/the court.~~

Here, the facts do not indicate how much Dorsey was asking for in damages, but if it is assumed it is over \$20 he would have grounds to request a jury trial for the legal issues in his case and not the equitable ones. *Question is only about Dorsey's appeal which was only about the injunctive*

Jury Trial Request

✓ A party who wishes to request a jury trial must file a written demand with the court, and serve all parties no later than fourteen days after the last pleading directed at the jury triable issue.

Here, there are no facts outlining how or when Dorsey requested a jury trial, but assuming it was timely pursuant to the rule above he would have grounds to request a jury trial for the legal issues in his case and not the equitable ones.

Legal v. Equitable Claims

In a case containing both legal and equitable claims, the legal claims are first tried by the jury and the equitable claims are decided after by a judge/the court. In deciding the equitable claims, the judge/court is bound by the jury's findings of facts from the trial of the legal claims.

you didn't need to talk about the legal claim but you did a good job of laying it out logically

In this instance, Dorsey appealed the ruling on the injunction granted by the judge at a bench trial after the negligence jury trial, claiming that the court erred in not allowing the jury to decide the issue. Injunctions are equitable claims and not legal claims.

Therefore, the court should deny Dorsey's appeal since they properly decided the matter of the injunction in a bench trial after the jury trial on the legal issues.

2. Wheelie Good Bike's (WGB's) Motion for Failure to State a Claim Upon Which Relief Can be Granted

Complaint

A well pleaded complaint should contain a short non-conclusory statement of facts, grounds for court jurisdiction, a claim showing entitlement to relief, and a demand for said relief.

Here, Dorsey's complaint only stated that the shop had sold him the bike and lied about the bike's capabilities and there were no over facts contained in the complaint. Based on these facts, Dorsey's complaint could be considered conclusory because he states that WGB lied about the bike's capabilities and provides no other facts to support that claim. Further, there are no facts stating that Dorsey included any claim showing entitlement to relief or a demand for said relief.

Unless further facts are uncovered that paint Dorsey's complaint in a more complete light, his complaint cannot be considered well plead (or complete).

DISCUSS FRAUD
+ requirement for
specificity.

Failure to State a Claim Upon Which Relief Can be Granted

Any time leading up to trial or at trial, any Party may move to dismiss an action/claim for failure to state a claim upon which relief can be granted.

Conclusion should be one sentence.

Based on the above analysis, the court should grant WGB's motion ~~(due to the fact that Dorsey's complaint is not well-pleaded and possibly incomplete because it only contains one conclusory fact/sentence.)~~ *It's not well-pleaded because it doesn't meet the specificity requirement.*

3. Dorsey's Motion for Summary Judgment (MSJ)

Motion for Summary Judgment

✓ A MSJ can be granted where it appears that there are no material facts in dispute and the moving party is entitled to judgment as a matter of law. A MSJ can be filed any time up to 30 days after the close of discovery.

✓ Here, Dorsey is seeking to dismiss Phin's subsequent suit seeking damages for his leg injury that did not go away and eventually required surgery. Below is the best basis for Dorsey's argument.

Claim Preclusion

✓ A valid final judgment on the merits bars relitigation of the same claim in a later lawsuit between the same parties.

Here Dorsey would argue that the same claim was already litigated where Phin was awarded damages ^{by a jury} and an injunction. As such, there are valid final judgments on the merits for both the legal and equitable claims that arose from the collision. The parties in this new suit would also be the same as in the first suit. *Is it the same claim?*

Therefore, Phin's new claim should be precluded from litigation and Dorsey's MSJ should be granted.

4. Phin's Suit for the October 2024 Incident

Claim Preclusion

✓ A a valid final judgment on the merits bars relitigation of the same claim in a later lawsuit between the same parties.

Here, although the incident that happened in 2024 is similar to the first incident and involves the same parties, it is technically a different incident and likely has a different set of facts. *it is.*

As such, Phin should not be barred from bringing a suit against Dorsey for the October 2024 incident.

5. Conclusion

The court ruled correctly on Dorsey's appeal, and the court should grant WGB's motion for failure to state a claim. Further, Dorsey would use Claim Preclusion to argue for an MSJ and the court should grant the motion. Phin will not be barred from bringing suit against Dorsey for the October 2024 incident.

END OF EXAM

3)

1. PORTER'S MOTION FOR PARTIAL SUMMARY JUDGMENT

MOTION FOR PARTIAL SUMMARY JUDGEMENT

✓ Motion for judgment on some but not all of the claims summary may be granted if from all of the pleadings, affidavits, and discovery materials there is no genuine issue of fact and the party is entitled to judgment as a matter of law.

Here, Porter is likely asking for a partial summary judgment using the legal theory of issue preclusion to prevent relitigation of the issue of Dusty's negligence in the physical incident at the record store that caused damage to Porter's personal property, the Rolex. If Porter can demonstrate the elements of issue preclusion, Porter would be entitled to partial summary judgment on the issue of Dusty's negligence and then the only issue to go to the jury would be the issue of damages. However, Porter is unlikely to prevail on a claim of issue preclusion for the reasons below.

? but he did prevail + the court did not err.

ISSUE PRECLUSION, COLLATERAL ESTOPPEL

Issue preclusion prevents relitigation of an issue that was already decided in a prior case ^{where there} ~~that~~ was a valid final judgment on the merits, where the issue was actually litigated and decided, and where the issue was essential to the judgment. ✓

Here, Porter is suing Dusty for damages caused to personal property, the rolex watch. The first case was Pipp suing Dusty for personal injuries caused by Dusty's physical conduct, slamming into people at the record store. The subsequent case involves the issue of Dusty's negligent conduct. In the first case between Pipp and Dusty, a jury found

✓ Dusty to be negligent against Pipp as an audience member. In the subsequent case, Porter was also an audience member at the record store when Dusty's conduct caused damage to Pipp's personal property watch. A jury is a valid final judgment on the merits because the jury is the trier of fact and this jury determined Dusty's conduct at the record store to be negligent, so it is an established fact that can be precluded from relitigation. The issue of Dusty's negligence was actually litigated and determined in the first case, as evidenced by the jury verdict. Dusty's breach of duty and negligence in the first action was essential to the determination of damages in the first case. Thus, Porter may use issue preclusion to preclude relitigation of Dusty's negligence and use it in a offensive manner, see below.

OFFENSIVE USE, *Issue Preclusion as a sword*

Offensive use of issue preclusion may be used to prevent relitigation of an issue in a subsequent suit that has already been decided when it is fair and equitable to do so.

Here, the issue of Dusty's breach of duty and negligence was fully litigated in the first case with Pipp. Even though the harm is different to Pipp (personal injury) and Porter (personal property damage) the issue of Dusty's negligence was already litigated. It is fair and equitable to use issue preclusion offensively against Dusty because Dusty has notice of the first case and presumably an opportunity to be heard fully because there was a jury trial. Dusty would have had an opportunity to present all of the facts and defenses for her conduct that night at the record store. Her evidence was not enough to sway a jury in her favor in the first case and she was found negligent to Pipp as an audience member. [The theory of issue preclusion is that if an issue was already determined by a proper court or jury then the finding of fact on that issue would be identical in a subsequent case. And this is what is happening with Dusty's negligence at the record store...Dusty has already been determined to be negligent and so there is no need to waste the court's time and relitigate the issue of Dusty's negligence.] Thus, Porter was properly granted partial

juror
sort of
repeating
yourself
here

make the conclusion its
own paragraph.

summary judgment on the issue of Dusty's negligence and the remaining issue of damages for Porter's personal property will go to the jury for determination.

CONCLUSION

No, the court did not err when it granted Porter's motion for partial summary judgment.

nice job answering the call of the question.

2. HYPOTHETICAL, DUSTY'S MOTION FOR PARTIAL SUMMARY JUDGMENT

MOTION FOR PARTIAL SUMMARY JUDGEMENT

✓ Motion for judgment on some but not all of the claims summary may be granted if from all of the pleadings, affidavits, and discovery materials there is no genuine issue of fact and the party is entitled to judgment as a matter of law.

✓ Here, Dusty filed a motion for partial summary judgement under a legal theory of issue preclusion because the issue of Dusty's negligence was already decided by a jury and the jury determined that Dusty was not negligent. If Dusty can prove all of the elements for issue preclusion Dusty may use it defensively to avoid liability in a subsequent suit with Porter.

ISSUE PRECLUSION, COLLATERAL ESTOPPEL

Issue preclusion prevents relitigation of an issue that was already decided in a prior case that was a valid final judgment on the merits, where the issue was actually litigated and decided, and where the issue was essential to the judgment. ✓

Here, there is a similar analysis as above, the only difference is that in this hypothetical, Dusty prevails. Dusty was the defendant in a negligence action from an incident at a record store in which Dusty's conduct was alleged to have caused personal injury and property damage to audience members. In that action, Dusty prevailed and was found not negligent by a jury. A jury trial is a valid final judgment on the merits because the jury is the trier of fact and their judgment is considered a final judgment. As the defendant, Dusty would have fully litigated the issue and presented all defenses. The issue of Dusty's breach of duty and negligence was essential to the judgment in the first case. Thus, Dusty will be able to use issue preclusion to defend herself in a subsequent negligence action. ✓

DEFENSIVE USE, *Issue Preclusion as a shield*

Defensive use of issue preclusion may be used to avoid liability in a subsequent suit where the party against whom collateral estoppel is being asserted had a fair opportunity to be heard on the critical issue in the prior case.

person using it must have been a party. If not, look to fairness

Here, Dusty was found by a jury to be not negligent. Dusty would have presented all of her defenses fully at the first trial and appeared to do so successfully because the jury found in her favor. Even though the plaintiff's have different claims, the issue of Dusty's negligence was already litigated. It would be fair for Dusty to use this judgment *because they were a party* defensively because Porter and Pipp were both audience members at the record store.

They were celebrating their birthdays together and were likely sitting right next to each other. If Dusty was found not negligent in an action brought by Pipp, it is fair for Dusty to use the judgment defensively to avoid liability in the subsequent case because Pipp and Porter would have been in such close proximity, probably at a tiny coffee shop table,

that the facts in each case were likely to be so similar that it is fair to use defensively to shield against Porter's relitigation of the issue.

CONCLUSION

✓ The court should grant Dusty's motion for partial summary judgment on a defensive use off issue preclusion.

END OF EXAM