

SAN LUIS OBISPO COLLEGE OF LAW

CIVIL PROCEDURE

Final Examination

Spring 2021

Prof. M. Rivas

Instructions:

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

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

Question 1

Dabney is a daredevil, who loves motorcycles and adrenaline. Dabney decided he wanted to ride his motorcycle on the railroad track, in front of the train that provides service to metropolitan areas in both North and South Dakota. Dabney thought it would be fun to race *just barely* in front of the train, pop a wheelie, and turn around to wave at the train operator.

Peter, Paul, and Perrie were passengers on the train when Dabney attempted his stunt. As Dabney popped the wheelie, he whiskey-throttled, which caused the motorcycle to abruptly U-turn and hit the side of the train. This caused the train to crash, injuring Peter, Paul, and Perrie.

Peter discovered that Dabney was uninjured and decided to sue him in a negligence action, seeking monetary damages for his injuries, a broken clavicle and a broken wrist. At trial, a jury found that Dabney's negligence was the sole cause of the accident and awarded Peter \$50,000 for his injuries.

Perrie heard about Peter's lawsuit and decided to sue Dabney for her injuries, as well. Perrie suffered a concussion and hearing loss, and sought \$100,000 in monetary damages. She also sought an injunction to keep Dabney from attempting any further motorcycle stunts along the railroad. Perrie moved for partial summary judgment against Dabney based on the jury finding Dabney negligent in the action with Peter. The court granted the motion.

Paul liked Perrie's idea to seek an injunction against Dabney and filed suit to keep Dabney from attempting any further motorcycle stunts along the railroad.

A few months later, Peter's doctor advised that his medical bills would exceed the \$50,000 award. Peter decided to file another suit against Dabney, seeking an additional \$20,000.

1. Is Perrie entitled to a jury trial in her case against Dabney? Discuss.
2. Did the court err when it granted the partial motion for summary judgment in Perrie's case? Discuss.
3. Is Paul entitled to a jury trial in his case against Dabney? Discuss.
4. May Peter sue Dabney in the second case? Discuss.

Question 2

Polly loved Tudor-style houses, and had always dreamed of buying one. She met Dottie, and learned that she was trying to sell her Tudor-style house. Dottie happened to do home inspections and provided Polly with a report on the condition of the house, stating that there were no structural defects and that the house was worth \$3M. The price was perfect, so Polly bought it.

Upon moving in, Polly discovered that the roof was structurally unsound. Moreover, the foundation was cracked. Polly was informed that the roof and foundation were repairable, but would likely cost around \$100K.

Polly was angry and just wanted the house that she had bought. She filed suit for fraud against Dottie, seeking \$100K. In the complaint, Polly simply stated that Dottie had “committed fraud, costing me \$100K and my dream.” Polly also claimed that Dottie was negligent in her inspection of the house, and sought an additional \$50,000.

A month after all pleadings on the case were filed, Polly requested a jury trial. Dottie objected.

1. Is Polly’s complaint sufficient to state a claim for fraud and how should Dottie proceed. Discuss.
2. May Polly join the fraud and negligence claims? Discuss.
3. May Polly receive a jury trial? On what issues, if any? Discuss.

### Question 3

Phoebe lives in a single-level home. Though the house is all on one level, there is a flight of stairs from the driveway to the front door. The stairs had become a bit wobbly, so Phoebe hired Darren to fix them.

Darren finished replacing the railings, but didn't have the material to put in all the new steps. He left at the end of the day, intending to come back the next day with the remaining materials. That night, Phoebe came home from a long day at work and started up the steps to her front door. She got halfway up the stairs, stepped onto the next step (which was missing), and fell through the staircase to the ground below. Phoebe was severely injured.

Phoebe filed suit against Darren for negligence, and made a timely request for a jury trial. Darren answered, denying negligence. The parties then engaged in discovery.

Darren filed a motion requesting an order for physical and mental examinations of Phoebe. Phoebe objected, but the court ordered her to submit to both examinations.

Later, Phoebe received a notice to depose Dr. McCoy, the doctor that had treated Phoebe's injuries. Darren had previously conducted 9 depositions. Phoebe told the doctor about the scheduled deposition. Doctor McCoy was deposed, but gave one-word answers because she was irritated that the deposition was cutting into her golf time.

Afterwards, Darren contacted Phoebe and tried to work out a new deposition date for Dr. McCoy. Dr. McCoy had decided to cooperate, but was not available for the following two weeks because she was going to have surgery for golf elbow. Darren, irked, filed a motion to find Dr. McCoy in contempt for failure to comply with a court order, and a motion compelling Dr. McCoy's deposition.

Phoebe decided she'd do better with a court trial and so withdrew her request for a jury trial.

1. Did the Court err in granting Darren's request for the mental and physical examinations of Phoebe? Discuss.
2. What objections should Phoebe have made prior to the deposition of Dr. McCoy? Discuss.
3. How should the Court rule on Darren's motions? Discuss.
4. Should the Court allow Phoebe to withdraw her request for jury trial? Discuss.

### Question 1-Answer Outline

1. Is Perrie entitled to a jury trial in her case against Dabney? Discuss.  
7<sup>th</sup> Amendment Right to jury trial: Seventh Amendment guarantees jury trial. The guarantee turns on whether the remedy is legal or equitable.  
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.  
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.

Perrie has two claims against Dabney. The first is a claim for damages flowing from the accident. This is a legal claim and would be entitled to a jury trial. The second is a claim for an injunction, which is an equitable claim. Thus, Perrie would not be entitled to a jury trial for this claim. There are no facts stating whether Perrie has requested a jury trial. If Perrie requests a jury trial within 14 days of service of last pleading directed to jury triable issue, there will be a jury trial on the claim for damages. This would be followed by a court trial for the request for injunction.

2. Did the court err when it granted the partial motion for summary judgment in Perrie's case? Discuss.  
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.

Here, there is a final judgment from the jury trial in Peter v. Dabney. The issue of negligence was fully litigated and essential to the judgment against Dabney. The issue of Dabney's negligence having already been determined by a jury, there is can be no dispute as to Dabney's negligence. Perrie can use that judgment as a sword against Dabney. This does not violate Due Process, as Dabney was a party in that action and therefore bound by that judgment. This leaves only the issue of damages to be decided by the jury in Perrie's case against Dabney.

3. Is Paul entitled to a jury trial in his case against Dabney? Discuss.  
7<sup>th</sup> Amendment Right to jury trial: Seventh Amendment guarantees jury trial. The guarantee turns on whether the remedy is legal or equitable.  
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.

Paul is only seeking an injunction against Dabney, which is an equitable claim. Thus, Paul does not have a right to a jury trial.

4. May Peter sue Dabney in the second case? 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.

Peter has already sued Dabney for this same transaction. There was a valid final judgment, by a jury that decided the case on the merits. It is irrelevant that Peter will owe more money for his medical bills. That does not grant Peter a new right to a jury trial, since his case has already been heard. Thus, Peter cannot sue Dabney for more money.

## Question 2-Answer Outline

1. Is Polly's complaint sufficient to state a claim for fraud, and how should Dottie proceed on that claim? Discuss.  
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.  
Rule 12(b)(6) Motion: Prior to filing an answer, the 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.

Here, the complaint simply stated that Dottie had "committed fraud, costing me \$100K and my dream." This is not a statement that would give Dottie notice of Polly's specific allegation(s), or give her enough information to respond. Polly must specifically state what fraud she believes Dottie committed. Dottie should bring a 12(b)(6) motion for failure to state a claim because, even if true, no legal relief can be granted based upon the statement in the complaint. The allegation that Dottie committed fraud is not specific enough, nor can relief be granted for loss of a "dream."

2. May Polly join the fraud and negligence claims? Discuss.  
Joinder of claims: A plaintiff can join any number and type of claims against a defendant, even if unrelated.

Here, there is one plaintiff (Polly) vs one defendant (Dottie). Polly can join all claims she may have against Dottie, even if unrelated. So, yes, the claims can be joined.

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

Here, Polly is bringing a fraud claim and a negligence claim, both for monetary damages. Monetary damages are legal in nature; thus, Polly has a right to a jury trial on both issues. However, the facts state that Polly requested a jury trial a month after all pleadings were filed. She can only have a jury trial now if the court exercises its discretion and grants it. Polly will have to advise the court as to her reasons for delay, which the court may or may not find persuasive.

## Question 3-Answer Outline

1. Did the Court err in granting Darren's request for the mental and physical examinations of Phoebe? Discuss.  
Scope of discovery: Any relevant, non-privileged matter that is proportional to the needs of the case.  
Physical Exam: Requires court order. Physical condition must be at issue and there must be a showing of good cause.  
Mental Exam: Mental condition not at issue.

Discovery encompasses all relevant information, or information that might lead to relevant information. Here, Phoebe has placed her physical condition at issue, because she is claiming damages for her injuries. A physical exam would be relevant to the case, and a single exam would not be out of proportion to the needs of the case. However, she has not put her mental health at issue. Nor would it lead to information relevant to the issue of Phoebe's physical injuries. Thus, the court correctly decided to grant the physical examination, but decided wrongly to grant the mental examination.

2. What objections could Phoebe have made prior to the deposition(s) of Dr. McCoy? Discuss.  
Notice: Notice of deposition to a party is sufficient to compel attendance. For a non-party witness, a subpoena must be used to compel attendance. Objection must be promptly served on noticing party, or objection is waived.  
Doctor-patient privilege: Privilege may be claimed as to doctor-patient communications. Privilege may not be claimed where plaintiff put physical condition at issue.  
Number of allowable depositions: Only 10 depositions allowed. Additional depositions require leave of court or stipulation of the parties.

The deposition of Dr. McCoy was noticed to Phoebe, not to Dr. McCoy. Thus, there was insufficient notice of the deposition.

In addition, Dr. McCoy and Phoebe enjoy doctor-patient privilege, which Phoebe should have raised. However, the court would likely find no privilege because Phoebe had placed her physical condition at issue.

Finally, the first deposition of Dr. McCoy was the 10<sup>th</sup> deposition in the case. The second deposition would have been the 11<sup>th</sup> deposition, which would only be allowed upon leave of the court. However, Dr. McCoy is required to participate in good faith. The court would likely find that the one-word answers given at the first deposition did not constitute good faith. Thus, the second deposition would not exceed Darren's total allowable depositions.

3. How should the Court rule on Darren's motions? Discuss.  
Depositions generally  
Compulsory appearance of non-party witnesses: Notice of deposition to a party is sufficient to compel attendance. For a non-party witness, a subpoena must be used to compel attendance.  
Failure to comply with court order: Notice to party does not constitute a court order to non-party witness.  
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.

Darren provided notice to Phoebe of the deposition of Dr. McCoy. He did not serve Dr. McCoy with a subpoena. As a non-party witness, Dr. McCoy is not obligated to attend the deposition. Since there was no subpoena, there was no court order requiring compliance. Thus, Dr. McCoy did not fail to comply.

Though Dr. McCoy did not participate in good faith, she was not obligated to attend at all since there was no subpoena. Dr. McCoy is trying to cooperate and reschedule, but is simply unavailable for the following two weeks due to a personal health issue. Although there was an attempt to meet and confer, the fact that Darren is irked will not be enough to persuade the court to grant the motion to compel.

4. Should the Court allow Phoebe to withdraw her request for jury trial? Discuss.

Right to jury trial: Demand must be timely made. May be withdrawn, but requires all parties to consent.

Work on being more succinct. I can tell you "get it" but you could ease up on the historical tangents a bit.

1)

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### 1. PERRIE V. DABNEY: JURY TRIAL?

#### Right to Civil Jury Trial

work on tightening Q.1's answer. combine your rules w right to jury trial, + have subsections for legal, equitable, + timing. I feel like this whole section could be 2 pages.

The Seventh Amendment to the US Constitution guarantees the right to a federal jury trial in "suits of common law" where the amount in controversy exceeds \$20.

Perrie has filed a civil lawsuit for the injuries that she sustained in the train crash caused by Dabney. She is also seeking an injunction to keep Dabney from wreaking further havoc by attempting more stunts along the train track. Perrie's complaint seeks \$100,000 in monetary damages related to her concussion and hearing loss. The Seventh Amendment guarantees Perrie's right to have a jury hear her civil claim against Dabney. The amount in controversy is \$100,000, which readily exceeds the \$20 minimum amount in controversy. Provided that some or all of Perrie's claims are cognizable as a suit of common law, e.g. entitling her to legal damages, then she may demand a jury trial for those issues.

watch just reciting facts pair w law

#### Conclusion

Perrie's civil suit meets the amount in controversy requirement. Provided that she is seeking a legal remedy, she is entitled to a jury trial.

#### Written Demand Required

A written demand for a jury trial must be filed with the court and served on the parties within 14 days after filing of the last pleading directed to the jury-triable issue. Failure constitutes waiver, however the court may and should grant relief in absence of a compelling reason not to if the issue is one normally tried to a jury.

*this is just file again* In order to secure her right to a jury trial, Perrie must make a written demand for same that is filed with the court and served on all the parties. It must be made within 14 days after the last pleading directed to the legal claim that is entitled to the jury trial. There are no facts to suggest that Perrie has failed to make a timely demand for a jury trial, however if she unintentionally waives her right by failing to make said timely demand, the court will likely grant her relief because monetary damages for negligence are a classic example of the kind of legal claim that is entitled to a jury trial, as discussed below.

### ***Conclusion***

Perrie must file and serve a written demand for a jury trial within the 14 day period following the filing of the final pleading addressing her negligence claim for money damages.

### **Suit of Common Law**

Determination as to whether a cause of action is a "suit at common law" turns initially on a historical determination of whether the claim or relief was available at law or in equity in 1791. Modernly, the Supreme Court has evinced a preference for jury trial in doubtful cases.

Negligence, which Perrie is alleging against Dabney, is a common law cause of action that grew out of the ancient British action for trespass on the case. It has been recognized as a legal suit in all US jurisdictions, and although many states now have statutory definitions of different types of negligence in their civil codes, the common law origins of the action are well established. Additionally, courts tend to agree that when a cause of action seeks monetary damages as a remedy, it is a legal claim.

However, Perrie's other prayer for relief seeks an injunction to prevent Dabney from attempting further motorcycle stunts. An injunction is a classic example of equitable relief, as discussed *infra*.

### *Conclusion*

Perrie's suit for negligence is a common law legal cause of action entitled to jury trial. Her claim for an injunction, however, traditionally sounds in equity.

### Injunction

An injunction seeks to prohibit or mandate (less commonly granted) the defendant from particular conduct. It is an equitable remedy granted when the plaintiff is likely to suffer irreparable harm in its absence for which monetary damages would be insufficient compensation.

Perrie's wants the court to prevent Dabney from doing any more stunt riding on the railroad tracks. Because Dabney's next stunt could cause additional injury or even death, there would be no monetary damages sufficient to compensate for that risk. However, Perrie may have trouble proving that she is entitled to such relief unless she intends to continue riding that particular area of train track and so will personally be placed at risk of irreparable harm. Absent a particular statute or federal rule that a party securing an injunction in such a case is entitled to legal damages, Perrie's claim for an injunction is equitable.

### *Conclusion*

Perrie's request for an injunction is equitable because there are no facts to suggest that this traditionally equitable remedy should be viewed otherwise under the circumstances.

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### **Legal and Equitable Claims Joined with Common Facts**

When a legal claim, e.g. for damages, is joined with an equitable claim, e.g. for an injunction, the legal claim should be tried first to a jury and then the equitable claim tried to the court. Note that a defendant cannot be denied a jury trial on damages issues merely because they are incidental to equitable relief.

✓ Perrie's prayer for relief involves both monetary damages, a legal claim, and an injunction, an equitable claim. The claims are based on the same set of common facts, i.e. that Dabney caused the train accident by riding his motorcycle on the tracks. Perrie is entitled to have a jury hear her claim for monetary damages. However, she is not entitled to a jury for her claim regarding the injunction. Therefore the court must try the legal claim for monetary damages to the jury first, then hold a bench trial for the remaining equitable claim.

#### ***Conclusion***

Perrie is entitled to a jury trial for her negligence damages, followed by a bench trial for the injunction.

## **2. PERRIE'S MOTION FOR SUMMARY JUDGMENT**

### **Motion for Summary Judgment**

✓ A motion for summary judgment (MSJ) may be granted as to some or all of a claim or defense if from pleadings, affidavits, and discovery already on the record, it appears that no genuine dispute of material facts exists and the movant is entitled to judgment as a matter of law. Absent a local rule or court order, MSJ must be filed within 30 days after close of discovery.

be specific. the issue is really liability.

Perrie is using the doctrine of collateral estoppel or, more modernly, issue preclusion, to argue that she is entitled to judgment as a matter of law regarding Dabney's negligence. In her MSJ, Perrie must plead and/or present sufficient evidence, i.e. proof of the prior judgment in Peter's case against Dabney, to show that there is no dispute on this issue. The court may then rule on whether or not to grant Perrie's motion, at least as to the issue of Dabney's negligence in causing the train crash.

liability

In the case between Peter and Dabney, Dabney was found to be the sole cause of the train accident. If the grant of Perrie's partial MSJ is sustained on appeal, it will simply operate to prevent relitigation of that discrete part of her negligence claim. Perrie will still need to prove by a preponderance of the evidence that her injuries were actually caused by the train accident, as well as the extent of the injuries and fairness of the monetary damages, etc.

### *Conclusion*

Perrie's partial MSJ may be granted if the court finds that Peter's judgment against Dabney precludes relitigation that Dabney was the sole cause of the train accident, however Perrie will still need to prove the rest of her negligence claim against Dabney.

### Issue Preclusion/Collateral Estoppel

A final judgment on the merits will bind the parties or their privies in a subsequent and different cause of action as to issues actually litigated and determined that were essential to the judgment in the first action. Where the mutuality principle has been eroded, issue preclusion may sometimes be used by a nonparty, provided it would not be unfair or inequitable to do so.

tighter rule please: final judgment, issue litigated + essential to judgment, + must have been party or in privity.

use of headings: FINAL JUDGMENT  
ISSUE ACTUALLY LITIGATED  
ISSUE ESSENTIAL TO JUDGMENT  
PARTY OR IN PRIVITY

Generally, due process requires that preclusion only be used against a party to the prior action. Dabney was the defendant in Peter's action where Dabney was determined to be

the sole cause of the train accident. That case dealt with the same occurrence that is at issue in Perrie's case, and Dabney had a similar motive to litigate his defense to negligence during Peter's claim. Therefore, it is likely fair to say that Dabney has had his day in court, including an opportunity to present whatever defenses he might have as to negligently causing the train to crash by riding his motorcycle on the track. It is fair and equitable that Dabney should be bound by that prior judgment in Peter's case in all future cases as to negligent causation of the train accident.

Courts have historically been loathe to permit a plaintiff who was not a party in the prior case to use issue preclusion offensively to avoid litigating her own case. Perrie was not a plaintiff in Peter's case and there are no facts to suggest that she attempted to join or intervene. Note though that Perrie was not an indispensable party to Peter's claim because her own interests were not impeded by Peter's suit against Dabney, except perhaps to the extent that Dabney might be out of money by the time she brought her own cause of action. It is likely that Perrie could have been permissively joined since her claims arose out of the same occurrence and there were common questions of both law and fact.

There are no facts to suggest that Perrie was in privity with Peter during his litigation, e.g. she was not controlling or contributing substantially to it, and there are no facts either that Peter adequately represented Perrie's interest. Therefore Perrie is not bound by Peter's judgment against Dabney and traditionally the requirement for mutuality would prevent her from using it as a sword against Dabney. However, because Dabney is bound by the jury's finding of negligent causation regarding the train accident, absent any reasons why it would not be fair and equitable to Dabney, Perrie may use the prior judgment to preclude relitigation of that particular issue. *remember, this is Due Process*

### *Conclusion*

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Perrie may use claim preclusion offensively against Dabney regarding the issue of negligent causation of the train accident.

### Standard of Review

When a court's decision on a matter of law, or a mixed matter of law and fact, is reviewed on appeal, the appellate court will conduct a de novo review wherein it substitutes its own judgment for that of the trial court.

*not an issue*

A MSJ involves primarily a legal determination, but that legal determination is based on factual matters. Therefore it is likely that the reviewing court will conduct a de novo review of ruling on Perrie's MSJ.

### Conclusion

Perrie's MSJ will likely be upheld for reasons explained above.

*not being appealed or reviewed. question to test-taker is did court err, not would it be upheld.*

## **3. PAUL V. DABNEY: JURY TRIAL?**

### Right to Civil Jury Trial

The Seventh Amendment to the US Constitution guarantees the right to a federal jury trial in "suits of common law" where the amount in controversy exceeds \$20.

Like Perrie, Paul has filed a civil lawsuit. However, Paul is not seeking monetary relief, therefore it is impossible to say that the amount in controversy exceeds \$20. In diversity actions the amount in controversy may be shown by either the value of equitable relief to the plaintiff or the cost to the defendant, however that would be an odd standard in the case of the right to a civil jury trial since the right does not generally exist when legal damages are not sought.

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### *Conclusion*

Because Paul is not seeking a traditionally legal remedy involving monetary damages, he is not entitled to a jury trial unless a modern rule invokes the right to a jury trial for the particular relief he wants.

### **Equitable Relief**

When the relief sought is traditionally equitable, e.g. an injunction, there is no right to a federal jury trial unless there is a clear legislative intent to create a modern right to a jury trial, e.g. by statute, or where a particular procedure that was formerly available only in equity is now permitted under federal rules for determining legal claims, e.g. class action.

Paul is seeking an injunction to prevent Dabney from riding his motorcycle on the tracks. An injunction is a classic example of equitable relief. There are no facts to suggest that any new rule or statute creates a right to legal damages regarding the particular injunction that Paul is seeking. So he is likely not entitled to a jury trial.

### *Conclusion*

Because the relief Paul is seeking is purely equitable, he is not entitled to a jury trial.

## **4. PETER V. DABNEY, ~~REDOX~~**

### **Claim Preclusion/Res Judicata**

A valid final judgment on the merits bars a plaintiff from trying the same cause of action, i.e. arising out of the same transaction or occurrence, against the same defendant in a subsequent suit.

= facts w/out analysis

Peter filed suit against Dabney for negligence, claiming \$50,000 in damages for his broken clavicle and broken wrist. He won at trial after the jury found Dabney's negligence was the sole cause of the train accident in which Peter was injured. Later, after Peter realized his medical bills would be \$70,000, not \$50,000, he attempted to file a second cause of action against Dabney to recover the additional \$20,000.

There was a valid, final judgment because...

← this feels like a long conclusion paragraph.

A plaintiff has a duty to thoroughly investigate his complaint before filing, and certainly before trial, including all damages claimed and factual support for the amount. Absent unusual circumstances that would likely constitute grounds for relief from the judgment, discussed infra, Peter should have asked for the full amount of damages in his initial suit. Because the claim for the additional money arises from the same transaction or occurrence as the prior suit, and because Peter's second suit is against the same defendant, Dabney, he is precluded from bringing the second claim.

### *Conclusion*

Res judicata bars Peter from filing the second claim.

### Merger and Bar

enough to discuss CLAIM PRECLUSION

When the claimant has won the prior suit, the cause of action merges into the judgment. When defendant has won, the claimant is barred by the prior adverse judgment.

Peter won his case against Dabney and recovered \$50,000 in damages. Presuming that it was general verdict and Peter won on all the issues, merger has occurred and Peter's cause of action has become one with the judgment and ceased to exist. Therefore, Dabney is released from all future claims by Peter arising from the same cause of action for the train accident.

### *Conclusion*

Peter may not bring his second case because his cause of action for negligence against Dabney merged with the prior judgment for \$50,000.

### Attack on the Judgment

*not an issue*

On motion, a court may relieve a party from final judgment or order on various grounds, including newly discovered evidence that by due diligence could not have been discovered in time to move for a new trial.

Peter had 28 days following the judgement in his prior case to move for a new trial. He didn't learn that his medical bills were going to be higher than expected until a few months later. Res judicata precludes him from filing another claim against Dabney, therefore Peter's only recourse is to attack the judgment and seek relief on the grounds that the new evidence regarding the cost of his medical treatment could not have been discovered earlier by due diligence. Because it is only a few months later, Peter is still within the one-year limit for bringing a motion for relief on such grounds. However, he must still act timely.

### *Conclusion*

*May Peter sue Dabney in the second case? Yes or no?*

Instead of filing a new suit against Dabney, Peter's best hope at getting the additional \$20,000 would be to seek relief from the trial court judgment on the grounds that there was no way he could have known any earlier that his treatment was going to be so much more expensive.

**END OF EXAM**

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1. Is Polly's complaint sufficient to state a claim for fraud, how should Dottie proceed?

Complaints-

✓ Each complaint for relief should contain, A short statement of the grounds for the courts jurisdiction, a short statement showing that the pleader is entitled to relief and a demand for judgment for relief.

Here, Polly has a very short complaint stating "committed fraud, costing me 110k and my dream". Typically all that is required, is that a pleader puts the other side on notice of the claim being asserted, detailed facts are usually not required. However, there are some crimes such as fraud, which is our crime in this case; that require a more detailed description in order to put the other side on notice of what they are being accused of.

Fraud Complaints-

✓ Circumstances that establish fraud or mistake must be stated with particularity. Fraud causes must show facts relating to the defendants acting with the required scienter.

Here, Polly's complaint is very brief. She lets the defendant know that the defendant committed fraud, but sheds no light to the action that was actually fraudulent. The defendant now has no idea what they are being put on trial for, Fraud is a very general term and doesn't let the defendant know they are supposed to defend themselves. The best way to work through a fraud complaint is by stating specific facts about who committed the fraudulent actions and what they did to be fraudulent. The vague language here doesn't meet the bar of particularity in a fraud complaint. Polly should have included the defendant's name, and named off her fraudulent actions of misrepresenting a house with roof and foundation issues.

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Polly's complaint is not suffice to state a claim for Fraud.

How should Dottie Proceed?

Motion for a More Definitive Statement- *+++*

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

*nice tactic discussion*  
Here, as we said earlier it's a very vague fraud statement. However, Dottie probably shouldn't lead with this motion, as ultimately she want the claim thrown out and not amended. Going this route would be an extremely nice thing for Dottie to do. The better choice would be to pursue a motion for failure to state a claim for which relief can be granted.

Motion for Failure to State a claim in which Relief can be granted-

✓ Prior to filing an answer, the defendant may if he choses file a Motion for Failure to state a claim in which relief can be granted. The clamant has failed to present sufficient facts which, taken as true would indicate a violation of law.

Here, the complaint for Fraud, really contains no facts that are perusable<sup>?</sup> in a court of law. The prosecution can't submit a fraud complaint, that just says committed fraud. You need ✓ specific facts, showing how the person committed fraud. The reason behind the particularity in a fraud complaint, is an element of fraud is scienter. Something in the complaint would need to show this scienter. This complaint only shows conclusions of law, and not the allegations of fact that it needed to show.

The motion is likely to be granted.

2. May Polly Join the fraud and Negligence Claims?

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Joinder of Parties- <sup>CLAIMS</sup>

Federal rules Permit the adjudication of all claims between the parties.

✓ Here, we have a single plaintiff, suing a single defendant from facts arising from the same cause of action. The goal in joining these to claims in one action is to resolve all disputes between the parties. Polly would be permitted to join her claims. This is to allow parties to not have to be dragged into court repeatedly and promotes efficiency within the courts.

Polly can Joinder the Claims

3. May Polly Recieve a Jury Trial?

Right to a Jury Trial-

✓ The federal court preserves the right to a jury trial in suits of common law, where the amount in controversy exceeds 20 dollars. If the requirements for a jury trial are met (matter of law, not equity) the request must be made within 14 days of the last pleading. If past this deadline, must require a waiver from the court.

Here, we get no timeline issues in Poly's request for a Jury. <sup>look at facts again (last line)</sup> We will assume that her request were made within the 14 day deadline. If they were not, Polly would have to show good cause for missing this deadline. She cannot use an excuse such as "I was in Tahiti on my Boat". Her excuse must be a legitimate reason of why she missed the deadline and will be decided by the courts discretion.

✓ In matters of law, you can request a jury trial. Matters of Equity, except for certain exceptions goes in front of the court. Here, we have a claim of negligence and fraud. Both these cases are seeking money damages (not an injunction, or specific performance),

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therefore they are a matter of law, and as long as properly requested both claims can have a jury trial request.

Polly most likely can receive a Jury Trial.

**END OF EXAM**

3)

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*Question 3: Phoebe v. Darren for negligence*

Qog 1: Did court err in granting Darren's requests?

### **APPLICABLE LAW**

*not an issue here*

Under the Erie doctrine, a federal court sitting in diversity jurisdiction must apply substantive laws of the state where it sits and the procedural laws of the federal courts, the Federal Rules of Civil Procedure (FRCP), and in most cases the Federal Rules of Evidence (FRE).

A balancing test determines substantive or procedural, and depends on: (1) the rule outcome determinative; (2) the federal court's interest in applying their own rules; (3) does the application of federal rule result in forum shopping.

Here, there are no facts to determine where jurisdiction exists and the FRCP and FRE will be applied. An order by a party for physical or mental examination is a rule of discovery, which is procedural and governed by the FRCP.

### Scope of Discovery

✓ Under the FRCP, the scope of discovery extends to relevant evidence that is reasonably calculated to lead to the discovery of relevant evidence. Discovery requests must be proportionate to the matter. The party may not seek discovery until a Rule 26(f) hearing has occurred. The requests must be signed by the party and state the signors name and address.

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## PHYSICAL EXAMINATION

Under the FRCP, a party may obtain a mental or physical examination of the other party when: (1) physical or mental conditions are in controversy by that party, and (2) good cause exists for the order of examination. Generally, good cause will be found if the question is not overly intrusive and it is relevant, measured in terms of its logical and legal relevance, and measured by the FRCP with regard to discoverability.

✓ Evidence is logically relevant if it tends to make the existence of fact of consequence more or less likely. Evidence is legally relevant if its probative value is not substantially outweighed by the prejudicial effect. Evidence is relevant and discoverable if it is reasonably likely to lead to the discovery of admissible evidence.

Here, since Phoebe is a party to the claim, in addition to her physical condition at issue, since she alleged negligence causing severe injury when she fell through the stairs that were incompletely constructed by Darren, a physical examination would be relevant to determine scope and extent of Phoebe's injuries and the proper amount of damages.

*↳ which is an element.*

## MENTAL EXAMINATION

The rules are the same as for physical examination.

✓ Here, since there is no indication of mental issues in the facts or the claim by Phoebe, and only issue is negligence causing severe injury, the court should allow only the order for physical examination and reject the order for mental examination.

Conclusion: The court did err in granting a mental examination, but properly ruled in granting a physical examination.

Rog 2: What objections should be made prior to Deposition of Dr. McCoy?

### **PHYSICIAN-PATIENT PRIVILEGE**

✓ Under the FRCP, there is no physician-patient privilege. Erie doctrine states the federal court sitting in diversity must apply the substantive laws of where it sits and the procedural laws of the federal system.

✓ Whether or not there is testimonial privilege is a rule of substantive law and must apply the laws of where it sits. Generally, physician-patient privilege covers communications between physician and patient for the purpose of medical treatment. If the court where this case sits recognizes this privilege, then generally, it would be privileged; however, an exception existing when the physical condition is in controversy.

Here, Phoebe filed a negligence claim for the severe injuries she suffered when Darren left the stairs incompletely constructed and left for the day compromising his duty of care, subjecting Phoebe to physical harm. Therefore, even if there is privilege, it would be excluded in this matter and would not prevent Darren from deposing Dr. McCoy.

Phoebe could object for privilege, but will likely lose this objection.

**DEPOSING NON-PARTIES** LACK OF NOTICE

Whether a party can be deposed is a discovery rule, and has the same evidentiary standards as granting examinations, therefore it is procedural and governed by the FRCP.

FRCP allows up to 10 deposition per case, limited to 1 day of 7 hours for each deposition. Reasonable notice is required by the deposing party, and a party can depose another party at any time. A non-party may be deposed by a party, but it must be done with a subpoena to the non-party and provide reasonable notice and accommodations in order to compel appearance.

*Can be done by notice, but notice would not compel non-party to actually show up.*

Here, Dr. McCoy may be deposed even though she is not a party to the claim. However, there are no facts that indicate Dr. McCoy received a subpoena, who is a non-party. Instead, a notice was given to Phoebe who told the doctor about the scheduled deposition. An objection should be made to discovery and should be stated accurately, timely, and with particularity.

Phoebe may have waived valid procedural objection to the deposition by not providing one with clarity to the court prior to the deposition.

Phoebe should object for lack of subpoena, but the court will need to determine if she waived her valid procedural objection.

*wouldn't matter, though could object to lack of notice because notice was sent to Phoebe + not to doctor.*

## NUMBER OF DEPOSITIONS

FRCP allows up to 10 depositions per case. Here, 10 depositions have already occurred. However, without the good faith cooperation of Dr. McCoy, which she did not provide in the 10th deposition where she gave one word answers, the court may find the 10th deposition did not occur; and without the subpoena, the original deposition did not follow proper procedure.

*remember, not necessary unless you need to compel non-party.*

The court should deny this objection, and rather should order the parties to correct the procedural issues discussed above and come to a resolution.

Conclusion: Objections for Physician-Patient Privilege, Lack of Deposition, and Number of depositions should be made prior to deposition. <sup>NOTICE</sup>

Q3: How should court rule on Darren's motions?

## **MOTION TO COMPEL**

### Scope of Discovery

Under the FRCP, the scope of discovery extends to relevant evidence that is reasonably calculated to lead to the discovery of relevant evidence. Discovery requests must be proportionate to the matter. The party may not seek discovery until a Rule 26(f) hearing has occurred. The requests must be signed by the party and state the signor's name and address.

As described above, the motion for Darren's request for order for physical and mental examinations falls under the FRCP. Here, since Phoebe is a party to the claim, in addition to her physical condition at issue, since she alleged negligence causing severe injury when she fell through the stairs that were incompletely constructed by Darren; a physical examination would be relevant to determine scope and extent of Phoebe's injuries and the proper amount of damages.

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Since there is no indication of mental issues in the facts or the claim by Phoebe, and only issue is negligence causing sever injury, the court should allow the order for physical examination and reject the order for mental examination.

### Motion to Compel

If the party or non-party fail to comply with a good faith and permissible discovery request, the other party may file a motion to compel. Typically, the parties are ordered to meet and confer in attempt to resolve the dispute. Ultimately, a motion to compel will be granted in the court's discretion.

Since, Darren did not receive a cooperating non-party response to the original deposition, it is reasonable to file a motion to compel. However, Since Dr. McCoy decided to cooperate, this motion becomes <sup>moot</sup> ~~mate~~. The unavailability of Dr. McCoy for 2 weeks does not show bad faith for a non-party, who is required to have reasonable notice and accommodations, and more importantly with a subpoena to the non-party. <sup>non-party</sup> <sup>right. now can't compel w/out subpoena</sup>

The court should deny this motion to compel at this stage, and rather should order the parties to correct the procedural issues discussed above and come to a resolution.

### **MOTION FOR CONTEMPT OF COURT**

A motion for contempt is a means to enforce an opposing party to comply with a court order. It can be accompanied with sanctions and is a disciplinary action that is decided on by the trier of fact.

Here, <sup>Darren (use D if y m ca't remember)</sup> ~~Derrick~~ lacks a number of elements required to file a motion for contempt of court.

- 1) ~~Derrick~~ <sup>Darren</sup> has no court order for the court to find Dr. McCoy in contempt. ~~Derrick~~ never

obtained the requisite subpoena to depose Dr. McCoy. While, the Doctor did not fully cooperate at the initial deposition, Derrick has procedural remedies available to correct this. Furthermore, Derrick didn't decide to file the motion for contempt until after the 2 week unavailability was given to him. Dr. McCoy was attempting to be cooperative, despite not being properly noticed.

For these reasons, the motion for contempt will fail.

Conclusion: The court should deny the motions to compel at this stage and contempt, and rather should order the parties to correct the procedural issues discussed above, including to meet and confer to try and come to a resolution.

Rog 4: Should the Court allow Phoebe to withdraw request for Jury Trial?

## **7TH AMENDMENT RIGHT TO JURY TRIAL**

The 7th Amendment of the US Constitution provides a right for a jury trial in federal civil case when the damages at law involved exceed \$20, and based on the requirements of the law and equity courts of 1791. <sup>new paragraph</sup> Here, Phoebe is filing a suit against Darren for negligence and to recover for damages of a severe injury. Negligence is an action recognized in common law and the damages required are legal damages and likely to involved more than \$20, since they originate from injuries suffered from the fall, allegedly caused by Darren's negligent construction of the stairs. Therefore, Phoebe is entitled to a Jury trial if the demand was timely filed with a written demand and notice serviced on the parties

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*this section should be super short since we know she's timely requested + is just trying to withdraw*

under Rule 38. Either party may make the demand as part of their pleadings. Failure to timely demand within 14 days of service of the last pleading directed to the court, constitutes a waiver. The opposing party has a right to respond within 14 days.

Here, Phoebe filed a timely request for Jury trial and now seeks to withdraw her request for jury trial, and seeks a court trial because she believes she would do better with a court trial. Darren answered the original request, denying negligence, which initiated discovery.

### REQUEST TO WITHDRAW FROM JURY TRIAL

*← this is the real issue*

There are 2 options to withdraw from the right to a jury trial: (1) The complaint must be amended and demand removed prior to the response by the other party; or (2) Both parties consent in written agreement to withdraw from jury trial.

Here, there are no facts that Phoebe withdrew prior to Darren's response, neither are there facts that Darren consented to withdraw from jury trial. Furthermore, the request to withdraw arrives at the end of the fact pattern, presumably after Phoebe learns the strength or weakness of her case through the discovery process, therefore deciding to withdraw based on her assumed success of a court trial instead of jury trial.

Darren should object to the withdraw request and the court should rule to deny Phoebe's request.

*non-responsive to call of question*

Conclusion: If there is no consent by Darren, the court should not permit Phoebe to withdraw.

**END OF EXAM**