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

Spring 2023 Final Exam

Professor Isaac Adams

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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Civil Procedure - ANSWER

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Suggested answer for question one

1- Should Daniel's Construction produce the video recordings?
Yes. Parties may obtain discovery regarding any non-privileged matter relevant to any party's claim or defense and proportional to the needs of the case. Further, any party may request another party to make available for review and copying documents, electronic copies (ESI), or other tangible items or permit entry onto the property. Daniel should have produced the recordings.

Does the work product doctrine protect them?

No. General rule: Work product is material prepared in anticipation of litigation and is generally only discoverable if 1) there is a substantial need and 2) the requesting party cannot obtain the information through other means. The videos were not recorded in anticipation of litigation or made following Daniel's counsel's request.

2- How should the court rule on Perry 's motion to sanction Daniel's Construction?

The court should deny the motion. A party seeking sanctions must certify that he tried in good faith to work it out with the other party without the court's involvement and that he asked the other side to meet and confer. Perry did not do any of that here.

3- How should the court rule on Perry 's physical and mental examination protective order?

The court should grant the protective order for mental examination but deny it for physical examination. If the responding party thinks a discovery request subjects it to annoyance, embarrassment, undue burden, or expense, he can move for a protective order. A party seeking protective order must certify that he tried in good faith to work it out with the other party without the court's involvement and that she asked the other side to meet and confer. The court can deny the order, limit it, or grant it with limitations.

Medical exam

When a party's mental or physical condition is in controversy, upon motion and for a good cause shown, the court may order that party to submit to a psychological or physical examination. Here, Daniel's Construction did not ask the court's permission to examine Perry . A physical or mental exam is the only discovery device requiring a court's permission.

- Good cause: The court must find that the moving party cannot obtain the necessary information from other sources, e.g., previous examinations of the same condition
- In controversy: Where the moving party places another party's condition in issue, the moving party must show that the responding party may have a specific condition appropriate to the examination requested. Movant can't use Rule 35 to go on a "fishing expedition," hoping to discover, through a battery of exams, a relevant condition.

4- How should the court rule on Daniel's Construction's motion for summary judgment?

The moving party must show: There is no genuine dispute on a material fact; and that he is entitled to judgment as a matter of law. The court, at its discretion, may grant or deny the motion. The court should deny the motion because the evidence is not so one-sided that the parties might not need a trial.

Suggested answer for question two

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

The trial judge can grant this motion after the opposing party has been fully heard with respect to an issue and there is no legally sufficient evidentiary basis for a reasonable jury to have found for that party concerning that issue, i.e., a reasonable jury would not have a legally sufficient evidentiary basis.
When Dave moved for JMOL, Paul had yet to present its evidence. Assuming that each party had discovery, Dave should have moved for summary judgment and not JMOL.
The court did not err in denying the motion.

2- Did the court err in granting Dave's motion to dismiss based on res judicata?

A valid and final judgment on the merits of a claim or cause of action precludes reassertion of that claim or cause of action in a subsequent action between the same parties or their privies, even as to claims that should have been but were not raised in the former case.
In the first lawsuit, Paul sued Dave to recover for property damage, which is the cost of the treatment. In the second lawsuit, Paul sued Dave to recover for personal injuries. Under the majority view, Paul's second claim was merged with the first lawsuit. However, under the minority view, Paul is asserting different primary rights.

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

Collateral estoppel (CE) precludes the re-litigation of an identical issue in a second lawsuit which was actually litigated and necessarily determined in the prior suit. Here, Paul wants to use Max v. Deer Valley (case 1) case as a nonmutual offensive issue preclusion provided that case 1 ended in a valid final judgment on the merits and the issue in case 1 must have been actually litigated and necessarily determined.

Can Paul, a nonparty to case 1, assert issue preclusion?
General rule: Mutuality rule: Both the party seeking to assert collateral estoppel and the party against whom collateral estoppel is sought were parties to the prior action.
Exception. PARKLANE HOSIERY v. SHORE allowed offensive nonmutual issue preclusion. A nonparty to a prior action is allowed to invoke collateral estoppel against a party to that prior action where it is "fair' to that party.
Factors from Parklane to analyze:
a. Did the party against whom CE is being asserted have a full and fair opportunity to litigate the issue in case 1?
b. Did the party against whom CE is being asserted have the incentive to litigate strongly?
c. No inconsistent finding on this issue.
d. Could Paul have easily joined or adopted a "wait and see" strategy to protect himself from an adverse judgment in case 1?
e. Was it foreseeable for the party in case 1 that someone in a subsequent suit would use CE offensively against the party?

Suggested answer for question three

1- Did the court err in denying the wholesaler's motion to dismiss?

Necessary party: Joinder is proper if: (1) in the person's absence, complete relief cannot be accorded; or (2) the person claims an interest relating to the subject matter/disposition without the party may (i) impair or impede the person's ability to protect the interest or (ii) leave any remaining party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations.
Indispensable party: When a party cannot be joined, the court must determine whether, in equity and good conscience, the action should proceed or be dismissed because the absent person is indispensable. The court considers these factors:

1. The extent to which a judgment rendered without the party might prejudice the person or other parties.
2. Whether prejudice can be avoided by appropriately shaping the relief.
3. Whether adequate relief can be granted without the person.
4. Whether the plaintiff has an adequate remedy if the action is dismissed.

Samantha has an interest in the jewelry order, and deciding the case without her would impair her ability to protect her interest. Samantha is an indispensable party because she cannot be joined because her joinder is not feasible since the court does not have jurisdiction over her. In equity and good conscience, the court should have dismissed the lawsuit.

2- Did the appeals court err in refusing to hear the appeal?

The general rule is that interlocutory (non-final) orders are not immediately appealable. The reason is to avoid burdening the court of appeals with piecemeal litigations.
Final judgment rule: A final judgment is one that finally disposes of the case, where nothing remains to be done in the suit but to execute the judgment.
The court has not yet entered a final judgment in the case. Therefore, an interlocutory appeal is not allowed.

Further, the case does not meet any exceptions to the final judgment rule.
The court of appeal did not err in refusing to hear the appeal.

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1)

Perry (P) v. Daniel's Construction (D)

1) Production of Video Recording

Scope of Discovery

Things may be discovered where they are relevant and proportional to the case. Things that are discover able are not necessarily admissible as evidence.

Here, P is suing D over the negligent building of a platform, and his request to see a video that is directly showing how the platform was built, where viewers will easily be able to tell if it was indeed build negligently or if it complies to the necessary standards is very relevant to the case, and sinc that is the only parts of the videos he is requesting it does not seem disproportional to the case at all.

The videos are valid discovery and should be produced,

Initial Disclosures

A party must present to the other party, without awaiting discovery request any information reasonably available at the time that they intend to use at at trial and is helpful to their case. This includes Documents, individuals with relevant information, calculation of damages and relevant insurance and must be delivered within 14 day after the 26F conferences.

Here, A video is a document, and thus could fall under the information that should be given from D to P during initial disclosures, however the main issue here is where the video does in fact show that the platform was build negligently. If the video only shows the platform being built to proper standards the video is beneficial to D, and thus needs

to be disclosed during Initial disclosures. However, if the video is in fact evidence of negligence (likely seeing as D is trying so hard to hide it) then it is not helpful to their case, it is harmful, and thus does not need to be disclosed to the opposing party at this time.

Thus the video must only be disclosed at Initial Disclosures if it helpful to D.

Pre-trial Disclosures

Thirty days before trial parties must disclose all information they intend to use at trial to the other party.

Thirty days to trial, the parties must disclose all information they intent to use at the trial, even if it is not helpful. Here, the video may or may not help D, but it is highly relevant to the case, and it has been requested by P. Unless D intends to completely ignore the video and not bring it up at trial at all it should be given to D at this time without request.

Conclusion

While the video is likely not be be disclosed without request to D, P has requested it, and it it well within the scope of discovery, unless it is protected by some exception to discovery, the video should be disclosed under requested discovery.

1b) Work product Doctrine (WPD)

Qualified Work product Doctrine

The work product that is produced by a lawyer or his agent in preparation of ligation is protected from discovery , unless the discovering party shows a substantial need and an inability to get the information any other way.

Here, D is trying to argue that because the tape has been handed over to his attorney, that it should be protected by discovery under WPD. However WPD only covered document made in anticipation of ligation. The video is a surveillance video of a worksite, it was likely made because the cameras are always filming on the worksite to protect the site from thieves or to watch workers. While the cameras might have been rolling in part to produce evidence in case something happened to incite a lawsuit, the video was not made in anticipation of this lawsuit, and it was not made by a lawyer.

Even if it was covered by WPD, the video is so important to the exact issue in the case and the evidence cannot be gotten any other way that it is likely that a judge would allow the video to be discovered even if it was covered by WPD.

Thus, the video would not be protected by WPD

Absolute work product

The Work product of a layer that shows the thoughts, impressions or legal strategies of that lawyer is barred from discovery no exceptions.

Here, the video does not qualify for WPD at all, and the video definitely does not have the thoughts or mental impression of D's Lawyer to make it absolute WPD.

2) Motion to Sanction Daniel's Construction

Motion to sanctions

A Party may ask the other judge to sanction a party if there is an issue between them, provided they have contacted or attempted to contact the other party and attempted to resolve the issue in good faith before asking the judge.

While it may be fair for P to ask the judge to Sanction D for failing to conform with the discovery request, there are certain steps that need to be taken care of not discussed in the

facts, first P must try to meet and confer on the issue and attempt to come to some form of resolution with D before reaching out to the judge, this is not stated to have been done in the facts. However, If P has gone and attempted to communicate with D, then it may be fair to ask the judge to step in a order sanctions in D continues to refuse to comply with the request, as the video is well within the scope of discovery.

Thus, The court should rule to deny the sanctions, unless P has attempted in good faith to communicated with D before requesting sanctions.

3) Physical and Mental Examination Protection Order

Medical Examinations

If the party has requested permission from the court a party or a person under a parties control may be subject to a medical exam if it relevant to the case and not unduly burdensome. this is the only discovery device that requires a motion from the court to proceed in the first instance.

Here, before D can request a medical examination of P, it must first request a motion from the judge. The facts do not state this was done, so the examination is not proper. Additionally, D is requesting both mental and physical examinations. While P is putting his physical health at issue by claiming injuries and it might be fair for him to undergo a physical exam (if properly requested) no facts indicate that he is suffering any type of metal distress and thus a mental examination would be invasive and unduly burdensome.

Thus, the court should not allow the mental examination at all, but if properly requesting from the court, D may force P to undergo a physical examination.

Protective Order

A protective order may be requested to protect a party from harassment, embarrassment or undue burden. the parties must meet or attempt to meet and resolve the issue between themselves before asking the judge to give a protective order.

Here, No facts state that P has attempted to resolve the issue of the examinations with D before requesting the protection order, and thus it should be denied.

However, if P had attempted to meet and confer and resolve the issue of the examinations with D before asking for the protective order, then the court would likely grant the protective order regarding the mental exam, as it would be unduly burdensome and invasive since P's mental state is not at issue. The physical exam would likely not be protected, unless D decides to run many invasive and irrelevant exams in the process.

Thus, If asked for correctly, the Judge would grant the order for the mental exam, but not the physical. As it stands in the facts, the order should not be granted.

4) Motion of Summary judgement

Summary Judgement (SJ)

After discovery, if the admissible evidence, when viewed in the light most favorable to the non-moving party are so overwhelming in favor of that party, and the non-moving party can bring no evidence to contradict it, and there are no remaining material questions of law, then the court may, as a matter of law render a judgement on the issue.

Here, the facts end with both parties still arguing discovery issues, and SJ must be requested after discovery is complete, so it was improper for D to ask at this point. However, if he requested SJ after discovery then there is still and issue of if the video is admissible and what does it show?

D is requesting SJ because they wish to argue that P cannot prove they were negligent. If P not able to bring in the video, and it is his only evidence, then D is correct in asking for SJ once discovery is complete, because P cannot prove the elements of his claim.

However, if the video is discover-able (as argued above, it is) and is deemed admissible, then the judge must determine if the tape, as the only mentioned evidence this case, shows footage that leaves NO remaining material questions of fact that D is not negligent. Since D has tried so hard to hide the video, it is very likely the video does show negligence. the judge must view the evidence in the light most favorable to P, and so if there is any hit of negligence in the video, SJ cannot be granted, as there are still material facts to be determined in the case.

Here, SJ is not likely to be granted.

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2)

1. Dave's Motion for Judgment as a Matter of Law

Judgment as a Matter of Law (JMOL) is guided by FRCP 50. A party may move for JMOL after either or both parties have completed presenting their case, and before the case is submitted to the jury for decision. The moving party must show that the plaintiff has so utterly failed to prove their case that no reasonable jury could possibly decide for them. In the interest of efficiency, if the judge finds this to be the case, they will issue a JMOL, which is a final judgment on the merits.

Here, Paul is seeking to recover monetary costs for a treatment that failed. However, it is "unclear whether Paul's health declined due to his skiing injury or Dave's improper treatment." Just because his pain worsened, does not mean that the treatment provided by Dave amounts to malpractice or negligence. Whether the court was correct in denying Dave's motion for JMOL depends significantly on any other evidence presented by Paul to show a breach of Dave's duty as a physician that caused Paul's monetary damages.

Absent additional evidence, Dave would have a strong argument that no reasonable jury could possibly decide for them, in which case the court would have erred in denying the motion.

However, if there was even the tiniest indicia of evidence potentially showing breach and causation in Paul's case (along with the other elements of Paul's claim), then the court was correct in denying the motion. Such questions of fact are appropriately left to the jury to decide.

2. Motion to Dismiss based on Res Judicata

When there is a valid, final judgment on the merits, parties are precluded by res judicata from bringing a second claim arising from the same transaction or occurrence (T/O) of the original claim. Claim Preclusion includes several key elements.

Full Faith and Credit Clause

When the two claims are being heard in different jurisdictions, for applying the law of preclusion in deciding whether to hear a second claim, the second jurisdiction will defer to the preclusion law of the jurisdiction in which the original claim was brought. Here, it is not clear if there are multiple jurisdictions involved. If there are, then the question would turn to whether the two jurisdictions had the same law of preclusion. This is significant here because Paul's first claim was for monetary damages, and his second claim was for personal injuries. Monetary damages and personal injuries represent two different primary rights.

Jurisdictions are divided on whether to allow multiple claims based on different primary rights asserted. The majority of courts follow the same claim theory, in which all claims arising out of the same T/O must be brought in the initial claim or they are precluded from future litigation. The minority rule is the primary rights theory, in which each primary right may be asserted in a separate claim.

Valid, Final Judgment on the Merits

A judgment must be valid, final, and on the merits in order for res judicata to apply. A valid judgment is any that is not decided based on jurisdiction, fraud, or improper notice. A judgment is final when the trial court has nothing left to do. A judgment is presumed to be on the merits unless it was decided for lack of jurisdiction, improper venue, indispensable parties, or statue of limitations.

When the jury returned a verdict for Paul, it met all of the above criteria and was therefore a valid, final judgment on the merits.

Same Jurisdiction or Different Jurisdictions

There is no indication that Paul brought his claims against Dave in the same or in different jurisdictions. In either case, however, because of the full faith and credit clause, the second state would apply the preclusion law of the first state.

Conclusion - Dave's Motion to Dismiss for Res Judicata

If the state in which the first lawsuit in March 2021 was brought by Paul against Dave follows the minority primary rights theory, then Paul would not have been precluded from bringing the second claim. If, on the other hand, the state follows the majority same claim theory, then the court was correct in granting Dave's motion to dismiss based on res judicata.

3 - Effect of Max v. Deer Valley on Paul's action in State C against Deer Valley

When a necessary factual issue has been decided in a valid, final judgment on the merits, parties are generally precluded from relitigating that same issue (issue preclusion). Collateral estoppel may be invoked and asserted against a party to prevent this relitigation.

Full Faith and Credit Clause

Supra. If State C is, as it appears, a different state from where Deer Valley is located, then state C will use the preclusive law of the state in which Max sued Deer Valley for determining if Paul may use issue preclusion.

Valid, Final Judgment on the Merits

Supra. Here, the jury has returned a verdict for Max, which is a valid, final judgment on the merits.

Collateral Estoppel

Collateral estoppel (CE) can only be invoked when referring to the same precise factual issue (mere similarity is not enough). The fact must be necessary to the verdict, meaning that it was essential to the determination. Due process requires that the party against whom CE is invoked have had a full and fair opportunity to litigate the issue.

Here, the key factual issue revolves around the same incident - the ski lift accident - and is part of the same cause of action. The factual issue is indeed identical in Paul's case against Deer Valley as what was decided in Max v. Deer Valley.

Necessary

A fact is deemed necessary when it was essential to the verdict. The jury's decision was dependent on that fact in some direct way--it must have had been a necessary element of the claim or defense. Here, the factual issue of the ski lift failing was necessary to prove the negligence of Deer Valley in the jury's decision in favor of Max. Therefore, the necessity requirement is met.

Due Process

To assert CE against a party, that party must have had a full and fair opportunity to litigate the issue. Here, there was a full trial with Deer Valley as defendant. They would have been given sufficient opportunity to fairly litigate, even though they did appeal. The due process requirement for CE is met.

Inconsistent Judgments

When there have been inconsistent judgments on the same factual issue, then CE may not be invoked. Here, this could be seen as relevant because Deer Valley has appealed. If the appeal had overturned the trial court verdict, there would be two inconsistent rulings on

the factual issue. This would prevent Paul from being able to use CE in his suit against Deer Valley. As of September 2021, however, there has been only one valid, final judgment on the merits, and that is the jury's verdict for Max in the original claim.

Because Paul is invoking CE against Deer Valley from the start, arguing that there is no other evidence needed to prove his claim, the court in state C will almost certainly have to make its ruling before any appellate case would be concluded. Therefore, this element would not prevent Paul from asserting CE.

Nonmutuality

For CE to be invoked against a party, they have to have been a party to the original claim. If a nonparty to that first claim seeks to use CE in a second claim, they are considered a nonmutual party. Nonmutual collateral estoppel (issue preclusion) may be used by a nonparty when against a party from the first claim as long as certain conditions are met.

When a nonparty is defending, they are using the issue preclusion as a shield, arguing that because the factual issue has already been litigated, and that was against he plaintiff they are defending against, there is no need for them to raise any other defense. This is nonmutual defensive preclusion. Nonmutual defensive preclusion requires that the party against whom it is asserted have had a full and fair opportunity to litigate the issue. As above, Deer Valley had this opportunity.

However, in this case, Paul seeks to use the judgment in favor of Max against Deer Valley from the first claim as a sword -- as a plaintiff in an action against Deer Valley. This would be nonmutual offensive preclusion.

Nonmutual Offensive Issue Preclusion

Courts have generally been reluctant to allow a nonmutual party acting as plaintiff to use a judgment on a factual issue from a prior claim as collateral estoppel, against a party in that

claim, when bringing a second claim involving that factual issue. However, there is a recent trend in some jurisdictions, including federal courts and California, to allow this type of nonmutual offensive preclusion if it is not unfair to the party from the original claim.

In a minority jurisdiction where nonmutual offensive preclusion is allowed, courts will determine unfairness by using the *Parklane* test. This test considers:

1. Did the party against whom CE is invoked have a full and fair opportunity to litigate the factual issue? If not, CE is more likely to be unfair.

2. Did the party against whom CE is invoked have incentive to litigate strongly? If not, CE is more likely to be unfair.

3. Could the nonmutual have easily joined in the first claim, or did they take a "wait and see" approach? If the nonmutual party took a wait and see approach, this is unfair to the party against whom CE is invoked.

4. Was it foreseeable that the judgment could be used as CE in a future claim? If so, CE is more likely to be fair.

Here, Deer Valley did have a full and fair opportunity to litigate, and they certainly had incentive to litigate as a loss would result in paying damages, plus harm to their reputation and possible consequences for their insurance costs. Also, it was foreseeable by Deer Valley that the judgment in the case won by Max would be used in a future litigation, if for no other reason than the resort would have known that at least one other person was injured by the ski lift.

The more decisive factor here will be if the court decides that Paul took a "wait and see" approach. If Paul had a good opportunity to join in the claim with Max in the first case, then he should have done so. If he was waiting to see if the decision would go in his favor

before bringing his own claim, this would be very unfair, and the court in state C should not allow Paul to use CE against Deer Valley.

Paul may reside in State C, and if that is a different state from where the incident took place, then Paul should argue that it was not convenient for him to join in the original claim. If the court in State C finds that it was reasonable for Paul not to join in the first claim against Deer Valley, then they could allow Paul's use of CE against Deer Valley.

Conclusion - Max v. Deer Valley and Paul v. Deer Valley in State C

If the state in which Max brought the initial claim against Deer Valley follows the majority and more traditional rule of not allowing nonmutual offensive issue preclusion, then there is nothing more to decide. Because of the full faith and credit clause, even if State C is a different jurisdiction, they will honor the law of preclusion from the first claim's state. In this case, Paul cannot use nonmutual offensive issue preclusion and must make his claim separately against Deer Valley.

If the state in which Max brought the initial claim against Deer Valley follows the trending but still minority rule of allowing nonmutual offensive issue preclusion as long as it is not unfair, then it will be important for them to decide if Paul had a reasonable chance to simply join in the original claim. If Paul could have easily joined in that suit, or even more importantly, if the court finds that he was waiting to see if the first verdict would be beneficial to his claim before filing, then they will rule that it is unfair.

If the court finds that Paul acted in good faith or had a good reason by not joining the initial claim, and was not taking a wait and see approach, then they will rule that it is not unfair. In this case, Paul will be able to use nonmutual offensive issue preclusion, and the court in State C will rule in his favor that he can use CE to avoid relitigating the factual issue.

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3)

Jason (J) v. Wholesaler (W)

Motion to Dismiss on basis of Indispensable party

Necessary Party

it is feasible to join a party if the court has Personal Jurisdiction over them and there joiner does not violate subject matter jurisdiction. A party is deemed necessary if one of the following is true: complete relief cannot be accorded without them, she has a interest in the litigation that is not properly represented or the lawsuit may subject a party to multiple obligations.

Here W wishes to assert that Samantha (S) is an Indispensable party. To be indispensable a party must first be deemed necessary. J brought the case in state A, which does not have PJ over Samantha. Without PJ, it is not feasible to join a party. Thus S's joinder is not feasible. but she may still be a necessary and indispensable party.

Complete relief

S and J are co-owners of the store and J is suing W over a refund for his business, which ever way it goes, complete relief can be accorded with S's presence, as it will either be a refund to the store or no refund at all.

Proper representation

Here, W will aruge that S and J have gotten into a personal argument and that J cannot adequately represent her interests in the the case. However the case is a business case, and S and J are co-owners so likely have similar levels of interest in the store. W will argue that even if they are 50/50 owners in the store, J has not shown up in months implying a complete lack of disinterest, when paired with a personal conflict, W could ague that J

may have chosen the state in which S is not subject to PJ for the express purpose of ruining the store in this litigation without S having a voice. However, this will be hard to prove and not may people would ruin their livelihood over a personal conflict.

J has a similar reason to litigate the issue as strongly as S would, as J is part owner in the store, and has the same interest in keeping his income coming in as S does. J might also argue that in 2022, a lot of work is done from home, such as accounting, contracts, and taxes. so even if he is not in the store because of a personal issue with S, it does not mean he was not involved in the store or that he wished to shut it down.

Thus the court will likely rule that S does have proper representation in the case, since her business interests are represented by her co- owner.

Multiple obligations

Here, the case a simple contract/ refund case, once it has been determined whether it be for a full refund if J wins or a enforcement of the contract (which J and S have already paid seeing as he is seeking a refund) S would not have a cause of action against W, so there is not risk of multiple obligations to or from any party.

Indispensable Party

A party is indispensable where If it is feasible to join them, the court will order their joinder. If it is not feasible to join them and the court "in equity and good conscious" cannot hold the trial without them, the court will dismiss the case. This is determined by weighing factors like if alternate forum is adequate, the actual harm rendered to S or the ability to shape relief without S.

Here, if assume that S was necessary under "Proper Representation." If she is necessary and it is feasible to join her, the court will order her joinder. However, her joinder is not

feasible due to lack of PJ, so the court must now determine if they can continue the case without her or if they must dismiss the case.

Alternate forum

Here, this is likely a good solution, State A does not have PJ over S, however, if the case was moved to A State where S does have PJ (provided it has PJ over J and W) then the case can be there.

If the case is more that 75K then they may have a claim for a diversity suit in federal court (again Assuming proper PJ on J and W)

There are some potential ways for the case to be heard in a different forum.

Actual Harm to S

Here, the courts will determine what the actual harm is to S- in this case it is a contracts issue. The harm to A would be the lack of jewelry, the lack of a refund or some combination there of. If J is deemed to be a proper representative, then the actual harm to S is very low, as her issues would have been litigated properly. If he is not deemed to be a proper Representative, and potentially working against S's interests the lack of jewelry or refund could be a larger hindrance to her business.

Thus there is a potential that there is an actual harm to S, although it is mitigated by J being a proper representative.

Shape Relief to avoid harm

Here, W will argue that there is no way to shape relief without the potential for S to be harmed, as she has not say in the relieve and J is not a proper rep. However, if the court can give the refund, or the jewelry straight to the business and not the J, most of the harm ca be reduced or alienated, as S will be able to continue on the store.

Conclusion

The court did not err in denying the wholesalers motion. While there are some facts to show that S might not have adequate representation in the case, S and J run a business together, even with personal issues there are no facts to show that J has an interest in running the business in an adverse way. Thus S'is interests are not harmed but J being the only plaintiff in the case.

Appeal

Final Judgement rule.

Generally, a party may not appeal an issue that has not been given a final verdict. An appeal can be heard on a non-final (interlocutory order) if it fits with certain exceptions.

Here, W wishes to appeal the determination that S was not a indispensable party to the action. While the action in J v. W is still running, the court may allow the appeal to be heard if it fits into an exception.

Writ of Prohibition or Mandamus

A Party may appeal a ruling from a judge were there is clear and convincing evidence in the moving parties favor that the judges rule was a complete usurpation of judicial power.

Here while the issue of indispensable party may be a bit on the fence, the ruling of the court was not so extreme as to be a usurpation of judicial power. If it was W could ask for a Write of Mandamus ordering the judge to dismiss the case.

However, this is not a appropriate exception in this case.

Interlocutory appeals act

A Party may, with express consent of the court, appeal a judgment that is a controlling issue of law and that has the ability to speed up the final judgement of a case. This is a discretionary exception.

Here, the court of appeals has refused to hear the appeal on the issue on if S is an indispensable party. While the court may hear an issue on joinder of parties, as who is and is not a party to a lawsuit has a high impact on the the ability to resolve cases quickly and correctly. However, as discussed above, S is not a indispensable party. Her interests, and those of her store, are likely adequately represent by J.

Therefore, while the court could have heard the issue under interlocutory appeals act, the court must consent to do so, and it did not. There was no error.

END OF EXAM