

MCL - Hybrid

Civil Procedure

Spring 2025 Final Exam

Prof. Siobhan Kelley

Instructions:

The final exam is composed of three essay questions. Each is intended to take approximately one hour to complete. Issues should be addressed in IRAC format. For each issue, your answer should clearly state the issue and the applicable rule. Then apply the law to the facts and analyze how the rule applies here. Come to a clear conclusion that directly answers the call of the question. While perfect spelling and grammar is not required, each rule must be stated correctly and use the correct terms. Make sure you are answering the questions in terms of civil procedure.

QUESTION ONE

Diddy's Denali Tours offers luxury scenic bus tours. Patty and Joe Pan book one of Diddy's tours. The night before the tour, Diddy went to an all-night party where he had many alcoholic drinks. The next day while driving the bus, Diddy drove off the road and the bus flipped, injuring the passengers on board.

There were 60 passengers on the bus at the time of the accident. Patty Pan was seriously injured, spending several weeks in the hospital. She is likely to require lifelong medical treatment for her injuries. Joe Pan had a concussion but no other injuries. The other passengers had a range of injuries, from scratches to broken bones.

Patty and Joe Pans filed a class action in federal court in California with themselves as the named plaintiffs. The requirements of jurisdiction and venue were met.

After the lawsuit was filed, Diddy was interviewed by several local news stations. In these interviews he stated that the passengers on the bus were "very rowdy" and strongly implied that their misconduct led to the accident.

The Pans were concerned that the statements made by Diddy to the news would negatively influence potential jurors. They sought a preliminary injunction from the court to prohibit Diddy from giving any other interviews about the accident. The injunction was denied. They then amended their complaint to request a permanent injunction as part of their damages to prevent Diddy from speaking publicly about the accident.

The Pans filed a timely motion for class certification. Diddy opposed the motion. The court denied the motion for class certification. Patty and Joe Pan continued the lawsuit as joint plaintiffs against Diddy.

During discovery, the Pans sought to depose people who attended the party with Diddy the night before the accident. They timely issued an interrogatory to Diddy asking for the names of other people who attended the party. Diddy's response to the interrogatory was to object to the interrogatory as irrelevant and outside the scope of discovery. Diddy and the Pan's attorneys had a 10-minute phone call and argued about the interrogatory, and then the Pans filed a Motion to Compel a response to the interrogatory. The motion was denied.

The Pans requested jury instructions that directed the jury to determine: 1) whether Diddy was negligent in the accident; 2) if Diddy was negligent, the amount of damages; and 3) a permanent injunction preventing Diddy from operating a commercial driving business in the future. The court gave the jury instructions on the first two matters, and issued an order denying the injunction. The jury found for Diddy.

Answer the following questions:

1. Did the court err in denying the class certification?
2. Discuss the Pans' options for appeal and likelihood of success on the following decisions by the trial court:
 - a. the court's denial of a preliminary injunction
 - b. the court's denial of the motion to compel; and
 - c. the jury instructions.

QUESTION TWO

A new soda pop called “Gassi” was introduced in the United States in 2023. The soda claimed to have probiotic properties and included a statement on the can that it is “good for gut health.”

In 2024, the Fair Trade Commission filed suit against the company under the that the claims that the soda was “good for gut health” is false and violated the federal Fair Trade Commission Act which prohibits “unfair or deceptive acts or practices in or affecting commerce.” The case was filed in federal court in California. The requirements of personal jurisdiction and venue were met.

During discovery, Gassi’s Chief Marketing Officer was deposed. She stated that she was aware that Gassi had more sugar than most sodas, which Gassi had added to cover the taste of the mild probiotic ingredients.

Gassi defended the lawsuit on the basis that the soda had not been promoted as a health product and therefore it had not engaged in “deceptive acts” under the federal statute. Gassi filed a motion to dismiss for failure to state a claim, which the court denied. The parties engaged in discovery and the case went to trial. The jury found that Gassi had violated the Fair Trade Commission Act by falsely advertising that the product had specific health benefits which it did not, in fact, have.

Pinky, who lives in California, had been told by her doctor that she should take probiotics because she needed to improve her gut health. She saw Gassi in the store and the statement on the can that it is “good for gut health” so she began buying and drinking Gassi. She drank 8-10 cans of Gassi a day but the more she drank, the worse she felt. After six months, Pinky returned to her doctor. Pinky’s doctor informed her that the large amount of soda she drank had caused her to become diabetic.

Pinky files a request for pre-suit discovery against Gassi, seeking the court to compel Gassi to turn over any records of all complaints by other customers as well as any internal research or reports on the adverse effects of consuming the product.

Gassi files an objection to Pinky’s request for records.

Answer the following questions:

1. Discuss how preclusion may impede or help Pinky’s suit against Gassi.
2. Should the court grant Pinky’s request for Gassi’s records?

QUESTION THREE

Pedro Padilla owned his own painting business in California for thirty years, until he was diagnosed with cancer at the age of 55 in 2022. For the last twenty years, Pedro had a contract with Daniel-Boore Paints to use their products exclusively. After his diagnosis, Pedro read an article that Daniel-Boore began using an additive in their paints that has been found to cause cancer in lab rats. Pedro believed his cancer was the result of an additive in the paint. In 2023, he files suit against Daniel-Boore in California federal court. The suit met the requirements of jurisdiction and venue. Daniel-Boore denied the use of their paints caused Pedro's cancer diagnosis.

The parties timely met for an initial discovery planning conference.

In its request for production of documents, Pedro asked for "Any and all reports on experiments or other scientific research that show the negative effects of your product on the human body." Daniel-Boore stated it had no such records.

Following the end of discovery, Daniel-Boore made a timely motion for summary judgment, arguing that Pedro's claims should be dismissed because he did not produce sufficient evidence to meet his burden at trial. No additional evidence was attached to the motion as exhibits.

In his opposition to Daniel-Boore's motion, Pedro includes as evidence his deposition transcript in which he testifies that an employee at the store where he bought the paint told him "You shouldn't be using this stuff, it's bad for you." He also included as evidence a copy of a letter from his doctor stating that his cancer diagnosis was consistent with exposure to the kind of chemical that was used in the additive to Daniel-Boore paint.

In its reply, Daniel-Boore argues that these documents are inadmissible hearsay.

The court denies Daniel-Boore's motion for summary judgment, citing its failure to include any evidence that demonstrates it is not liable for Pedro's death.

The parties go to trial, and the jury found for Daniel-Boore.

Six months after final judgment was entered in the case, Pedro read a newspaper interview with a scientist that had worked at Daniel-Boore. In the interview, the scientist stated that she was aware that a university had conducted scientific research on the additive in the paint that Pedro believed caused his cancer. The report showed that the additive causes cancer in lab rats. The scientist told the newspaper that she became aware of the university's research in 2020. Pedro did not know of the scientist's existence during the litigation. He believes that Daniel-Boore had an obligation to identify her as a potential witness during the discovery process.

Answer the following questions:

1. Did the court err in its denial of the motion for summary judgment?
2. What are Pedro's options regarding the scientist and what he stated in the interview?

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Question 1 Answer Outline (Issues: class action, juries, appeal)

1. Did the court err in denying the class certification?

The answer should begin with a clear rule statement identifying and describing the four elements of class certification: (i) the class must be so numerous that joinder of all members is impracticable, (ii) there must be questions **or** law or fact common to the class, (iii) the claims of the representative parties must be typical of the claims of the class, and (iv) the representative parties will fairly and adequately protect the interests of the class.

The analysis should discuss first that there is no fixed number of class members to qualify for class treatment and discuss that 60 parties with varied injuries could qualify as a class or try their claims individually. Regarding common questions of law or fact, that element is met here easily because all the passengers were on the same bus together and in the same accident. Regarding typicality, although there are varying degrees of injury of the passengers this won't prevent class certification because their present degree of injury is known (unlike *Amchem* where some putative class members injuries had not yet developed). There is no issue with the representative parties.

2. Discuss the Pans' options for appeal and likelihood of success on the following decisions by the trial court:
 - a. the court's denial of a preliminary injunction

The overall answer to question two should begin by explaining the final judgment rule.

The answer should explain that an interlocutory appeal is typically available regarding injunctions (an answer may describe "equitable relief" generally). As a matter of law the appeals court will conduct a de novo review of the trial court's decision.

- b. the court's denial of the motion to compel; and

The answer should explain that the review of decisions on discovery by the appeals court are not available until after final judgment.

- c. the jury instructions.

QUESTION2

ANSWER OUTLINE (claim preclusion, pre-suit discovery)

Preclusion: The students should discuss both claim preclusion and issue preclusion, clearly identifying the elements of both rules. Claim preclusion is not appropriate here because the claims are not the same because Pinky is not suing for false advertising.

A strong answer will also explain that Pinky could not have joined the first lawsuit because it was an FTC action.

Issue preclusion should also be discussed here.

Pre-suit discovery: A strong answer will explain that pre-suit discovery is intended to preserve evidence that would otherwise not be available, such as the deposition of a person with a life-threatening illness. It is not appropriately used to gather evidence to support a complaint.

QUESTION THREE

Answer Outline (Issues: MSJ, discovery)

A passing answer must explain that a motion for summary judgment requires a demonstration that there is no genuine dispute about a material fact.

A strong answer will also explain that summary judgment may be appropriate if the moving party can demonstrate the absence of evidence supporting the opponent's claim and that the burden is on the nonmoving party to produce specific facts showing a genuine issue for trial. This is clearly based on the *Celotex* case, the classic MSJ case.

On the discovery issue, the student should begin with a general definition of discovery and then explain a request for production of documents. A strong answer will also reference that the report did not have to be produced as part of mandatory disclosure under FRCP 26(f) because the defendant did not intend to rely upon the document at trial as part of its claims or defenses. Daniel-Boore had no obligation to make Pedro aware of the scientist or her beliefs.

Note: the question is written to elicit sympathy for Pedro, because I have been working with the students on resisting the urge to automatically argue for the underdog and look objectively at the law and the facts.

1)

1. Whether the court erred in denying the class certification

Class Action

A class action is a group of persons with a common interest. The class as a whole is the party. Only the representative's specific claims are tried but the judgment is binding on the class as a whole. Until the class is certified, it is called a putative class. Class action certification requires a showing that 1. The class is so numerous that joinder of all members is impracticable, 2. There are questions of law or fact common to the class, 3. The claims or defenses of the representative parties are typical of the claims or defenses of the class, and 4. The representative parties will fairly and adequately protect the interests of the class members. There are three types of class action cases: 1. Prejudice Class Actions, 2. Injunctive and Declaratory Class Actions, and 3. Damage Class actions.

Numerosity

The size of the class is so large that joinder is impracticable. There is no specific number of parties and it is analyzed on a case-by-case basis. Here, the number of potential Plaintiffs in the putative class is 60 because there were 60 passengers on the bus with potential claims against Defendant Diddy. The numerosity requirement is fulfilled here.

→ why? connect these statements

Common Question of Law or Fact

The class members must have a common question of law or fact. The allegation that the class members have all been harmed by violation of the same law is not enough. Evidence of commonality in the putative class must be proven. Here, although the passengers did not sustain the same injuries from the bus accident, they all had injuries. The common question of fact is that they were all injured as a result of Defendant's alleged negligent

great

driving. They can prove this by their medical records, witness statements, and photographs. The commonality requirement is fulfilled. *good*

Typicality

The class representatives must have claims or defenses typical of the rest of the class. The representative must "stand in the shoes" of the other class members. Here, Patty and Joe Pan were passengers injured in the bus driven by Defendant. There are 58 other passengers who were injured as a result of the bus accident. The overlap of Patty and Joe's experience with the other passengers on the bus demonstrate that they would successfully be able to stand in the shoes of the other bus passengers. *good*

Adequacy of Representation

Fair and adequate representation of the other class members means that there is a burden on the representatives to affirmatively show that they will fairly and adequately protect the interests of the rest of the class. Here, Patty and Joe have no prior relationship or affiliation with Diddy or the company. They are not biased and there is no conflict of interest present. Patty and Joe were also both injured, meaning that they can fairly represent the other injured members of the class. In fact, Patty's serious injuries will bolster her ability to serve as the representative because her injuries are so serious that she will require lifelong treatment. Although Joe was arguably not severely injured (concussion), he can fairly represent the passengers that may have been less seriously injured as a result of the bus flip. As such, they both would serve as proper representatives of the class. *good*

Conclusion

Yes, the court improperly denied class certification. *good!*

Damages Class Action

A damages class action requires that 1. common questions predominate over individual questions and 2. class action is the superior method to handle the dispute. This type of class action requires that members share common questions of law or fact that predominate over individual questions. This is the most common type of class action suit and often deals with mass tort claims, like this 60 passenger bus accident.

2. Pans' options for appeal and likelihood of success on the court's denial of a preliminary injunction *final judgment rule?*

Interlocutory Appeals of Certification *great!*

A court of appeals may permit an appeal from an order granting or denying a class action certification. The party must file a petition for permission to appeal within 14 days of the order or within 45 days after the order is entered if any party is a governmental agent, officer, entity, or employee. An appeal does not stay the proceedings in the district court unless the district judge or the court of appeals so orders. Although Pan and Joe filed a timely motion for class certification, they did not file a petition for permission to appeal the court's denial of class certification. They proceeded in the case as the only Plaintiffs and did not pursue a timely appeal for the class certification.

Appeal of the Court Decision *-title this "final judgment"*

On appeal, the appellate court reviews de novo the legal issues within the trial record. According to the final judgment rule, an appeal may not be filed until entry of a final judgment in the underlying case. A judgment is enforceable after entry of judgment even if there are post-trial motions pending. Here, the jury issued their verdict and found for Diddy. This is the court's final judgment. As such, they can properly file an appeal of the jury verdict. *good*

Denial of the Preliminary Injunction

To appeal the court's denial of a preliminary injunction, a party can file an interlocutory appeal. This is an exception to the final judgment rule. The order must conclusively determine the disputed question, resolve an important issue completely separate from the merits of the action, and be effectively unreviewable on appeal from a final judgment. If the Pans had filed an interlocutory appeal while their underlying case was still pending, the judge could have ruled on the preliminary injunction matter. However, the Pans did not file the required interlocutory appeal and as such, they cannot appeal the ruling on preliminary injunction as the final judgment has been issued. *good*

Denial of the Motion to Compel

A motion to compel is a discovery motion brought by one party to request the judge order another party to comply with a discovery request or obligation. A motion to compel discovery responses is usually brought when the opposing party has produced insufficient responses to discovery requests or they fail to respond all together. The moving party has the burden to prove that the nonmoving party has failed to properly comply with their discovery obligations. Prior to filing a motion to compel, the parties must thoroughly meet and confer about the disputed discovery matter. Here, the opposing attorneys has a 10 minute phone call about the insufficient discovery response. A phone call is not enough to fulfill the requirement of the duty to meet and confer. The Pans' attorney should have issued a meet and confer letter after receiving the interrogatory response. Because the attorney instead filed the motion to compel, it may not satisfy the court's mandate that the parties adequately meet and confer about disputed discovery matters. As such, the Pans will likely not be successful in their Motion to Compel Diddy's response to the interrogatory in question. *good*

The Jury Instructions

Legal versus Equitable remedies

Most civil claims involve a claim for money damages, which is decided by the jury. Damages are designed to make the Plaintiff whole. They are preferred over equitable remedies because they are easier to enforce. Conversely, an equitable remedy is either a court order for specific performance, or an injunction. Equitable remedies are not decided by the jury, they are decided by the judge. They are appropriate when money damages are inadequate. Here, the Pans asked for a jury instruction regarding an equitable remedy - instituting a permanent injunction preventing Diddy from operating a commercial business. The judge was correct in denying this jury instruction because an equitable remedy cannot be decided by the jury. An appeals court will not overturn the trial court's decision denying the permanent injunction.

great

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2)

Collateral Estoppel/Issue Preclusion

- 1) Same issue of fact or law in Action 1 (A1) as Action (2)
- 2) Issue was fully and fairly litigated
- 3) The issue was actually decided
- 4) the issue was necessary to the judgment.

good

Issue Preclusion or Collateral Estoppel states that an issue that was decided in a prior case cannot be litigated again in a second case regarding a different cause of action.

First, the issue in A1 which was a court case between the Fair Trade Commission FTC and Gassi was whether or not Gassi had violated the FTC act by falsely advertising that the product had specific health benefits. A jury decided that Gassy had falsely advertised, ✓ because it did not have specific health benefits. In Pinky's suit (A2) she consumed Gassi because it was advertised as "good for gut health" and then after six months of consuming the beverage (granted in extremely large quantities at 8-10 drinks a day) the doctor informed her that the soda she drank had caused her to become diabetic. Here Pinky has two issues: one the advertising that the drink was good for gut health and because her doctor had told her she needed to take probiotics to improve her gut health she started drinking Gassi. The FTC had just gotten a decision that stated Gassi engaged in false advertising that the product had specific health benefits. So here is the same issue: false advertising as to health benefits. In Pinky's case she is also going to have the issue of whether or not drinking 6-8 cans of a soda product caused her to become diabetic. Gassi will argue as to the reasoning behind why Pinky drank so much soda which caused her diabetes. In this case Pinky has two issues that will need to be decided:

1. Was the statement good for gut health false advertising? This issue was decided in the A 1 as a yes, Gassi did falsely advertise.
2. Did Pinky's consumption of the drink cause her diabetes? This is a different issue between A1 and A 1.

If Pinky wants to use preclusion in her suit against Gassi she will only be able to use the false advertising issue that was decided in the first case because its the same issue of fact. She will not be able to use preclusion for her second issue of whether it caused her diabetes because that is a different issue of fact for a jury to decide. *good*

Secondly, the question is whether or not the issue in A1 was fully and fairly litigated. Here, Gassi is a soda pop company that is large enough to be introduced into the United States. That is a large distribution area so it's logical to assume that they are a rather large company. They are also being sued in A1 by the Fair Trade Commission a government agency. The parties went through an entire suit which involved Gassi defending itself, filing a motion to dismiss for failure to state a claim, and both sides engaged in discovery and went to trial and had a full trial by jury where the jury found for the FTC. It is reasonable to assume because Gassi fought this all the way through the court system, did not settle, and filed various motions along the way that this was fully and fairly litigated. Furthermore, the FTC is a much larger, bigger entity than Pinky who is a single individual so Gassi would have put considerably more firepower into their court battle with the FTC than they would against an individual. In short, this issue was fully and fairly litigated. *good*

Thirdly, the issue was actually decided: the jury found for the FTC that Gassi engaged in false advertising that the product had specific health benefits which included a statement on the can that the soda was "good for gut health."

Finally, the issue of whether the product had specific health benefits or whether it did not was necessary to the judgment of Gassi engaging in false advertising.

The Doctrine of Mutuality

great

A stranger to the case may not be benefitted nor bound by the decision. In this case that would be Pinky that would be the stranger who should not be benefitted nor bound by the decision on the issue in the case between the FTC and Gassi. However, over time this concept has eroded specifically in this instance with the *Parklane Hosiery* case in which a stranger could benefit or be bound by offensive non-mutual collateral estoppel.

Non-Mutual Offensive Collateral Estoppel

good

The plaintiff wishes to use a prior decision on an issue in a prior case as a sword to attack the defendant in a subsequent case. The judge has discretion as to whether to allow this or not. And they are more likely to grant NMOCE if the plaintiff did not have a chance to join in as a party in the original action. The judge will evaluate to ensure fairness, no ambush litigation.

Here, Pinky could use this decision in the original case that Gassi did engage in deceptive advertising by falsely promoting their soda pop as good for gut health as a "sword" to attack Gassi in her own case. She will argue that Gassi is precluded from arguing again whether or not they had engaged in false advertising because of the decision on the issue in the first cause of action. Furthermore, Pinky would not have been able to join in on the first case because because this was a suit against Gassi by the Fair Trade Commission a big government agency (just like the SEC went after *Parklane Hosiery* and the plaintiffs in the second case would have not been able to join in on that first cause of action). Pinky was not waiting for the FTC to finish the case and then jump in to ambush Gassi because she would not be able to join the first case.

Conclusion: Pinky has an excellent case to use non-mutual offensive collateral estoppel in her suit against Gassi in regards to the issue of false advertising for specific health benefits because that issue was already decided in the prior case and the judge is likely to consider

it fair for her to use that decision because she would not have been able to join as a party to the first case.

2. Should the court grant Pinky's request for Gassi's records?

Scope of Discovery - FRCP 26

Discovery rules apply to all non-privileged information relevant to a party's claims or defenses. The information itself does not need to be admissible but it must be reasonably calculated to lead to the admission of relevant evidence. Relevant evidence is evidence that has a tendency to prove or disprove a material fact. A material fact is one that can effect the outcome of a trial. Discovery requests must be proportional and relevant to the case. *good*

Here, Pinky has filed a request for pre-suit discovery against Gassi. Pinky has not yet filed an actual suit against Gassi, she is simply on an preliminary expedition to find materials to see if there is enough evidence to follow through with the lawsuit. If Pinky had engaged in filing a suit and Gassi had responded with an answer and they had officially gotten to the discovery phase Pinky would have had a duty to meet and confer where her lawyers and Gassi's lawyers would have met to make a plan for discovery. Pinky will argue that these records are necessary to determine if other customers lodged complaints about becoming diabetic after consuming the product. And she will also want the internal research or reports on the adverse effects of consuming the product. She will state that these are necessary to helping prove her case that the soda caused her diabetes because currently she only has the report from her doctor.

In this case, the lawsuit has not happened yet. Gassi will object because a company does not have a duty to respond to requests of this magnitude requesting records of all complaints by other customers as well as any internal research or reports on the adverse effects of consuming the product. In short, they are not proportional to the needs of the

pre-suit discovery. Even if this had been a full blown properly filed suit and the parties were in discovery in preparation for trial this would still be a large request because Pinky is requesting "any recovers of ALL complaints" and "any research or reports." That's a lot of information requested.

Gassi will object that the request is overly broad and unduly burdensome and possibly some of the materials are covered by privilege or confidential in nature. If they are a large enough company to distribute throughout all of the United States likely they receive complaints of all sorts. All complaints is very broad it is not narrowly tailored to complaints about false advertising or complaints about the soda consumption causing diabetes. It is likely that there could be complaints about the design of the beverage, or how the soda tastes. Perhaps there are complaints about the design of the can that may be difficult for some to open. In short, there are likely many complaints that are not relevant to Pinky's case. The same could be said about "adverse effects." There may be many adverse effects that might be reported: it's a carbonated beverage if its a soda, perhaps there are adverse effects like too much gas. These are outside the scope. There is also a cost associated with producing the records whether they are paper form or electronic. Gassi will object to having to spend funding on producing this volume of records requested.

Attorney - Client Privilege: Confidential communications between an attorney and their client are privileged if they are regards to legal advice.

Gassi may object that some of the requested documents are privileged. Perhaps some of the documents were prepared in anticipation of litigation with the FTC. While the underlying facts are not privileged (for example the CMO stated that Gassi had more sugar than most sodas and they used the sugar to cover the taste of the probiotics) Gassi may object to some of these materials being disclosed due to privilege and therefore not available for pre-suit discovery.

The court has the discretion to grant Pinky's request for Gassi's records however the records will need to be greatly limited in scope because discovery rules state that relevance and proportionality are core to the materials that are exchanged between the two parties. Because this is just pre-suit discovery and Pinky has requested ALL records of complaints by other customers and ANY internal research or reports on the adverse effects of consuming the product this not proportional to the current need. Pinky is looking to see if Gassi's product caused her diabetes it would be proportional to request any other complaints from customers complaining about Gassi's products causing diabetes. And it would be a better course because of the need for relevancy and proportionality to specifically request internal research or reports about the soda causing diabetes. Since the soda was introduced in 2023 and it is now 2025 that is only two years. That span of time for those specific reports on the topics identified above would be a more reasonable scope.

Conclusion: The court should grant Pinky's request for Gassi's records however because it is a pre-suit discovery motion, the court should limit the requests to producing complaints and non-confidential research or reports on the soda causing diabetes from 2023 - onwards to present day in the interest of complying with the concepts of relevance and proportionality.

missed specific rule on pre-suit discovery → only to preserve testimony.

Strong analysis

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3)

1. Did the Court err in its denial of the motion for summary judgment?

A court will grant a motion for summary judgment where the moving party shows there is no genuine dispute as to any material fact, and the movant is entitled to a judgment as a matter of law. A material fact is one that will effect the outcome of the case, and raises a dispute when a reasonable jury may come to different conclusions on that fact. The evidence is viewed in the light most favorable to the non-moving party. *good note*

Here, the material fact is whether Daniel-Boore Paints additive causes cancer because that is why Pedro is suing Daniel. Daniel-Boore bringing the motion for summary judgment is him claiming that Pedro does not have enough evidence to meet the burden, Daniel-Boore did not provide evidence but under *Celiotex*, Daniel-Boore does not need to provide any additional evidence to his motion for summary judgment. However, Pedro is saying that Daniel-Boore Paint gave him cancer because of the additive in the paint, this is a genuine dispute because the parties cannot agree on what caused Pedro to get cancer. Pedro says Daniel-Boore paint gave him cancer, and Daniel-Boore paint is denying that the paint caused Pedro's cancer. A jury could believe that Daniel-Boore is credible in his claim of their paint not causing Pedro's cancer, just by Daniel-Boore denying it. A jury could also believe Pedro is credible in the evidence of the transcript provided, it could cause a reasonable jury to believe that Daniel-Boore Paints' additive did give Pedro cancer. A reasonable jury could also believe the letter from Pedro's doctor, on Pedro's exposure to the additive in the paint. Even though Daniel-Boore is arguing that Pedro's evidence is inadmissible hearsay, the evidence was still used and admitted, and a jury can still find Pedro to be believable. Ultimately, the jury can come to different conclusions as to whether the additive in the paint did or did not give Pedro cancer, and the jury could reasonably come to different conclusions on who to believe because there is nothing to indicate that they are not credible in their claims. Here, the light is viewed more favorable *good!*

to Pedro because he is the non-moving party, and his evidence shows there is a dispute still on whether Daniel-Boore's paint caused Pedro's cancer.

Therefore, the court did not err in denying Daniel-Boore's motion for summary judgment because there is still a genuine dispute.

great analysis

2. Pedro's options regarding the scientist

Final Judgment Rule

Final judgment rule applies when there has been a final judgment on the case, even if there are still post-trial motions pending. The exception to a final judgment rule is an interlocutory appeal.

Here, there has been final judgment on the case because there was a jury verdict in favor of Daniel-Boore. There are not any interlocutory appeals in this case, so the exception does not apply.

Therefore, Final judgment rule applies.

Motion for Relief from judgment

good

A party may file a motion to be relieved from judgment if the other party acted in fraud, or mistake. Motion for Relief from Judgment can be filed up to a year after the final judgment.

Here, Pedro can file a motion to relief from judgment because it has only been 6 months since the final judgment. If Pedro filed for the motion to relief from judgment he will succeed if he can prove that Daniel-Boore had knowledge of the scientific research. Pedro will argue that Daniel-Boore was aware of the scientific report and refused to turn it over to Pedro when Pedro requested it. Pedro will argue that he should be relieved from judgment because Pedro requested "any and all reports on experiments or other scientific

research that show the negative effects of your product on the human body", and when Daniel-Boore claimed to having nothing he did not comply with the discovery request.

they Daniel-Boore is going to argue that he did not know that the scientific report existed, but Pedro will try to negate that because the scientist that worked at Daniel-Boore was aware of it three years before the litigation between Pedro and Daniel-Boore occurred, so

no Daniel-Boore should have been aware of it as well. Pedro is going to argue that Daniel-Boore should have disclosed the identity of the potential witness because she conducted scientific reports and research and that was part of his discovery requests. Daniel-Boore will argue that he did not need to disclose the scientist because he was not planning on using the scientist as a witness, so there is not an obligation to disclose.

Therefore, Pedro could file for a motion to be relieved from judgment, and that would be his best option since some time has past since the final judgment.

Motion New Trial

The court has the discretion to grant a new trial, if filed within 28 days from the date of judgment.

Here, a motion for new judgment would not apply because it has been 6 months since the final judgment has been entered.

Therefore, a motion for a new trial would not be an option for Pedro because the time ran out.

Appeals

Unfortunately Pedro is limited on options because it has been 6 months since the final judgment, and most appeals have a limit of 28-30 days after judgment.

END OF EXAM

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