

Monterey College of Law

Civil Procedure

Final Examination

Spring 2024

Professor Isaac Adams

Instructions:

Answer: Three Essay Questions

Total Time Allotted: Three (3) Hours

Question One

In January, Husband and Wife were en route to a party when a Delta tourist bus collided with their car, injuring them. Subsequently, in February, Husband sued Delta, alleging negligence and seeking \$100,000 in property damage. The jury concluded Delta was at fault and awarded a verdict in the husband's favor.

In March, Husband filed another lawsuit against Delta to get \$90,000 for his personal injuries stemming from the same January incident. Delta filed a motion to dismiss, arguing that the principle of res judicata applied. Nevertheless, Delta sued Husband in April for negligence, blaming him for the January collision. Husband filed a motion to dismiss Delta's lawsuit, citing res judicata.

In May, relying solely on the February judgment in Husband v. Delta, Wife sued Delta and filed a motion for summary adjudication of the issue that Delta was negligent, which the court granted.

- 1- How should the court rule on Delta's March motion to dismiss? Discuss.
- 2- How should the court rule on Husband's April motion to dismiss? Discuss.
- 3- Did the court properly grant Wife's motion for summary adjudication? Discuss.

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Question Two

As a class representative, Pat, a California resident, filed a class action lawsuit in a federal court in California against CarTech, a Texas-based electric car manufacturer. Pat accused CarTech of selling electric cars equipped with defective batteries.

In the lawsuit, Pat named four individuals from Texas as class members who purchased their vehicles between 2018 and 2023 and experienced injuries because their car batteries caught fire. Each of those four individuals paid over \$100,000 in medical bills and sustained permanent disfigurement. However, the only damage Pat personally claimed was the \$8,000 he spent on battery replacement.

When Pat filed a motion for class certification, CarTech opposed, arguing that the court lacked jurisdiction to hear the case since the class members shared the same state citizenship as CarTech and the class was too small. Further, the latter also pointed out that Pat's attorney was a new admittee and inexperienced in class action litigation. Lastly, CarTech argued that if the court retained jurisdiction and certified the class, Pat must be required to serve personal notice on individual members of the class. Consequently, the judge declined to certify the class. Pat promptly appealed. However, the Court of Appeals refused to hear the appeal.

- 1- Did the court err in denying the certification of the class? Discuss.
- 2- Did the Court of Appeals err in refusing to hear the appeal? Discuss.

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Question Three

Perry was swimming in a lake when he was struck and injured by a boat operated by Daniel. Fearing litigation, Daniel hired Ian, a private investigator, to interview people who witnessed the accident. Ian found and interviewed Walker, the only person who had seen the event, and wrote a detailed report for Daniel. The report included Walker's detailed account, Ian's assessment that Daniel had no viable defense, and Ian's opinion on Walker's credibility as a witness.

Months later, Perry filed a lawsuit against Daniel, claiming Daniel neglected to properly maintain the boat as required by state law, which mandates that boat owners annually maintain and submit the maintenance records to the state.

During the discovery phase, Daniel's lawyer subpoenaed Perry to undergo physical and mental examinations, which Perry challenged as intrusive and unnecessary, requesting a protective order. Perry also demanded that Daniel produce all boat maintenance records for the past fifty years, which Daniel contested as irrelevant and excessively burdensome.

Fearing arrest for tax evasion, Walker fled the country. As a result, Perry sought to discover Ian's investigative report with a request to produce. Daniel refused to release the report, asserting it was a protected work product. In response, Perry filed a motion to compel disclosure.

- 1- How should the court rule on Perry's protective order?
- 2- Should the court order Daniel to provide the maintenance records?
- 3- How should the court rule on Perry's motion to compel?

ANSWER OUTLINE

Suggested answer for question one

1- How should the court rule on Delta's March motion to dismiss?

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, Husband sued Delta to recover for property damage. In the second lawsuit, Husband sued Delta to recover for personal injuries. Under the majority view, Husband's second claim was merged with the first lawsuit. However, under the minority view, Husband asserted different primary rights, which would allow the second suit to proceed.

2- How should the court rule on Husband's April motion to dismiss?

The court should dismiss Delta's lawsuit against Husband not for claim preclusion but for failure to assert a compulsory counterclaim.

If the counterclaim arises out of the same transaction or occurrence as the plaintiff's claim, it must be asserted, or the claim will be waived. The same transaction or occurrence is defined as the one circumstance without which neither party would have found it necessary to seek relief.

3- Did the court properly grant Wife's motion for summary adjudication? Discuss.

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. Wife wants to use Husband v. Delta (case 1) 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 Wife, 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 to question two:

1- Did the court err in denying to certify the class? Discuss.

The class action is a joinder device that permits a lawsuit to be brought by a class representative on behalf of large numbers of persons whose interests are sufficiently related.

The class must be certified. Initial elements to establish that there is a class action lawsuit

- *Commonality: There is some issue in common to all class members, so the resolution of that issue will generate answers for everybody in one stroke. The common issue in the question is: did Cartech sell cars with defective batteries?*
- *Numerosity: Too many class members for practicable joinder. No magic number to determine what is "too many" class members.*
- *Typicality: The Rep's claims are typical of those of the class. This means the representative who brings action on behalf of the class, his claim is typical "similar" to those in the class. Pat's claim is not typical of those of the class members because they are seeking to recover for their personal injuries, and Pat is seeking to recover the replacement cost of the battery.*
- *Representative adequate: The class representative will fairly and adequately represent the class. Pat likely won't adequately represent the class because he has a different kind of injury than the rest of the class.*

Types of class action:

- *Prejudice to the class action: Class treatment is necessary to avoid harm (prejudice) to class members or the non-class party. Not applicable to the question.*
- *Injunctive or declaratory judgment class action: The class seeks an injunction or declaratory judgment because the defendant treated the class members alike.*
- *Damages: 1) common questions predominate over the individual question; 2) class action is the superior method to handle the dispute.*

Court appoints class counsel: Class counsel must fairly and adequately represent the interests of the class. Since Pat's lawyer is a new admittee who is inexperienced with class action litigation, it is arguable that Pat's lawyer would adequately represent the class.

Notice for damage class action lawsuit. This notice requirement is only required for the "damage" class. The court must notify the class members that they are in class. The notice mail must tell the members that they can: 1) Opt out; 2) They will be bound if they do not; 3) They can hire their own counsel and join the suit; 4) The class rep has to pay for the notice cost; and 5) All class members will be bound by the court's judgment, except those who opted out.

Subject matter jurisdiction in class action, only the class rep citizenship is relevant. The class rep citizenship must be diverse of all the defendants, and the amount in controversy for the rep exceeds more than 75,000. Pat does not meet the amount in controversy.

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

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. Denial of class certification is an exception to the final judgment rule. Therefore, the court erred in refusing to hear the appeal.

Suggested answer to question three

1- How should the court rule on Perry's protective order?

Scope of Discovery

Federal Rule 26(b)(1), parties may obtain discovery regarding any non-privileged matter that is relevant to any party's claim or defense. For good cause, the court may order discovery of any matter relevant to the subject matter" involved in the action. Rule 26 (b)(1) further provides that "relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence.

****(Rule prior to December 2015 FRCP Amendment)***

Daniel (D) struck and injured Perry (P). P's complaint against D sought damages for negligence for physical injury. As such, D's request that P undergo physical and mental examination is intended to obtain non-privileged matter relevant to P's claim regarding the extent of his alleged damages arising out of the accident.

Therefore, D's discovery motion requesting the court to order a physical and mental examination is within the proper scope of discovery.

(a) The Physical Examination

Under Rule 35, the court may order (1) "a party, or a person its custody or under its legal control," (2) whose mental or physical condition is "in controversy," (3) to submit to a physical or mental examination, (4) on a motion for "good cause." Here, P, as the plaintiff, is a party. In Schlagenhauf v. Holder, the U.S. Supreme Court stated that "[a] plaintiff in a negligence action who asserts mental or physical injury, places that mental or physical injury clearly in controversy and provides the defendant with good cause for an examination to determine the existence and extent of such asserted injury.

P's complaint sought damages for physical injury caused by D's.

P's physical injury is therefore in controversy, and good cause has been shown for the physical examination.

(b) The Mental Examination of P

Here, P did not assert mental injury. Therefore, D must support her motion to order a mental examination of P by making an affirmative showing that P's mental condition is in controversy and that there is good cause for ordering a mental examination. Here, D has not made such a showing.

2- Should the court order Daniel to provide the maintenance records?

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.

Requesting the maintenance record that goes back fifty years before the accident is disproportional and outside the relevancy scope.

3- How should the court rule on Perry's motion to compel?

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 report was prepared in anticipation of litigation because D feared being sued.

Since Walker is unavailable, P may be able to discover the part of the report where Walker described the incident. However, the absolute work product protects the rest of the report.

Absolute work product: Documents that contain mental impressions, opinions, conclusions, and legal theories are undiscoverable. D may argue that Ian's conclusion about D's available defenses and Walker's credibility are undiscoverable.

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1)

1.)

Claim Preclusion / Res Judicata

A valid, final judgement on the merits of a claim or cause of action precludes the reassertion of that claim or cause of action in a subsequent action against the same parties or privies, and even to claims that should of, but were not, raised in the former action.

Full Faith & Credit Clause

If case 1 and case 2 are from different judicial systems, then the court from case 2 will apply the preclusion law of the judicial system that decided case 1.

Here, there are no facts to indicate that case 1 and 2 are from different judicial systems.

Thus, the full faith and credit clause is satisfied.

In Order To Apply Claim Preclusion, Apply Cromwell

Case 1 and case 2 were brought by the same claimant against the same defendant.

Here, case 1 was brought by the husband against Delta. Case 2 was brought by the husband against Delta. The claimant is the same (Husband) as well as the defendant (Delta).

Thus, case 1 and case 2 were brought by the same claimant against the same defendant.

Compulsory Counter Claim

If the defendant fails to raise a compulsory counter claim, one that arises from the same transaction or occurrence as the main claim, then the claim is waived and the defendant can not raise it in a subsequent action.

Here, Delta sued Husband in April for negligence, blaming him for the January collision. The husband will make the argument that Delta failed to raise a compulsory counter claim in case 1, and as result, the claim is waived and Delta cannot raise it in a subsequent action (case 2). The court will likely agree with the husband because Delta failed to raise a compulsory counter claim at the appropriate time.

Thus, the compulsory counter claim is waived.

Case 1 Ended In A Valid, Final Judgement On The Merits

Valid

All judgements are valid unless they lacked PJ, SMJ, based on fraud, or the notice to D failed to conform with due process.

Here, there are no facts to indicate that Case 1 was not valid.

Thus, Case 1 is valid.

Final

It is final when there is nothing left for the trial court to do.

Here, in case 1, the jury concluded Delta was at fault and awarded a verdict in the husband's favor.

Thus, case 1 is final.

On the Merits

All judgements are on the merits unless they were based on lack of PJ, lack of SMJ, improper venue, indispensable parties, or statute of limitations.

Here, there are no facts to indicate that the judgement was not on the merits.

Thus, the judgment was on the merits.

Therefore, Case 1 ended in a valid, final judgement on the merits.

Case 1 & 2 Asserted The Same Claim

Same Transaction/Occurrence Test (Majority View)

There is a single cause of action when the claims asserted arise from the transaction. (*Rush v. City of Maple Heights*)

Here, both of the Husband's claims arose from the same January incident, when a Delta bus collided with his car, injuring him. Therefore, under the majority view, there is a single cause of action.

Thus, under the same transaction/occurrence test, the husband would not be able to sue in both cases.

Primary Rights Theory

(Minority View)

Each right violated constitutes a separate cause of action . There are separate claims for property damages and personal injuries, because these are different primary rights. (*Vasu v. Kohler*)

Here, in case 1, Husband sues Delta seeking property damages. In case 2, Husband files another lawsuit for his personal injuries. Taking into consideration the primary rights

theory, Husband has separate claims because Case 1 was for property damages and Case 2 was for personal injuries.

Thus, under the primary rights theory, the husband would be able to sue in both cases.

Merger/Bar

When a plaintiff wins a claim in case 1, and wants to assert a second claim (that he should of in case 1 and didn't) in case 2, that claim is merged into case 1 and he can not assert the second claim (Michell v. Federal Intermediate Bank). If a plaintiff lost a claim in case 1, and wants to assert that same claim in case 2, he is barred from doing so because the claim has already been decided.

Here, Husband won his claim in case 1 for property damages. Then, Husband asserts a second claim in Case 2 for personal injuries. Under the merger/bar theory, his second claim should of been merged into the first claim, and he should of not been able to assert the second claim.

Therefore, under the minority view of *primary rights theory*, the court should deny Delta's motion to dismiss. Under the majority view of the *same transaction/occurrence test*, the court should grant Delta's motion to dismiss.

2.)

Compulsory Counter Claim

If the defendant fails to raise a compulsory counter claim, one that arises from the same transaction or occurrence as the main claim, then the claim is waived and the defendant can not raise it in a subsequent action.

Here, Delta sued Husband in April for negligence, blaming him for the January collision. The husband will make the argument that Delta failed to raise a compulsory counter claim in case 1, and as result, the claim is waived and Delta cannot raise it in a subsequent action (case 2). The court will likely agree with the husband because Delta failed to raise a compulsory counter claim at the appropriate time.

Thus, the compulsory counter claim is waived.

The court should grant Husband's motion to dismiss.

3.)

Issue Preclusion / Collateral Estoppel

Issue Preclusion, or collateral estoppel, precludes the re litigation of an identical issue in a second lawsuit, that was actually litigated and necessarily determined in the prior suit.

Full Faith & Credit Clause

See Supra

Here, there are no facts to indicate that case 1 and case 2 are from different judicial systems.

Thus, the full faith and credit clause is satisfied.

Case 1 Ended In A Valid, Final Judgements On The Merits

Valid

See Supra

Here, there are no facts to indicate that the judgement was not valid.

Thus, there is a valid judgement.

Final

See Supra

Here, the jury in case 1 concluded Delta was at fault and awarded a verdict in the husband's favor.

Thus, the judgement was final.

On The Merits

See Supra

Here, there are no facts to indicate the judgement was not on the merits.

Thus, the judgment is on the merits.

Therefore, Case 1 ended in a valid, final judgement on the merits.

Identical Issues In Both Cases

CE only applies when there in identical, factual issues in both cases. A mere similarity does not suffice.

Here, both the husband and the wife were in the same car when the Delta bus collided with them. In case 1, the husband sued Delta, alleging negligence, and won. In case 2, the Wife is now suing on the same issue of negligence.

Thus, there are identical issues in both cases.

The Issue In Case 1 Was Actually Litigated

The issue in case 1 must have been litigated.

Here, in case 1, Husband sued Delta, alleging negligence and seeking \$100,000 in property damages. The jury concluded Delta was at fault and awarded a verdict in the husband's favor.

Thus, the issue in case 1 was actually litigated.

The Issue In Case 1 Was Necessarily Determined

The issue was essential to the judgement in case 1. This means that the finding on the issue was the basis for the judgement. (*Rios v. Davis*)

Here, the Husband won in case 1 due to the fact that a Delta tour bus was found to be negligent when they collided with Husband's car. The issue of negligence was essential to the judgement in case 1, and as a result, the finding on the issue of negligence was the basis for the judgement.

Thus, the issue in case 1 was necessarily determined.

CE Can Only Be Asserted Against A Party In Case 1

CE can only be asserted against a party to case 1, otherwise, CE may not apply. This is to ensure due process. A judgement cannot bind a nonparty who has not had his day in

court. The party against whom CE is asserted must have a full & fair opportunity to litigate the issue.

Here, Wife wants to assert CE against Delta. Delta was a party in case 1 (Husband v. Delta).

Thus, Delta had a full and fair opportunity to litigate the issue.

Non Mutual Issue Preclusion

Non mutual issue preclusion is when a non party to case 1 wants to use issue preclusion in case 2.

Mutuality Rule - The mutuality rule states that the party seeking to assert CE and the party against whom CE is being sought must have been parties in the prior case. However, there is an exception under *Bernhard v. Bank Of America*. A nonparty to case 1 can shield or defend themselves with a prior judgement from case 1. This is called non mutual defensive preclusion and is based on judicial economy.

"A judgment from a prior action be asserted as a defense in a later action by one who was not a party nor in privity with a party from the first suit, so long as the party against whom the judgement is being raised was a party or in privity with a party in the first suit, and had a full and fair opportunity to litigate the issue" - (*Bernhard v. Bank of America*)

Here, Wife is not attempting to shield or defend herself with a prior judgement from case 1.

Thus, non mutual defensive preclusion does not apply.

Non Mutual Offensive Issue Preclusion

Typically one can not use non mutual offensive preclusion. However, there is a trend to allow it under *Parklane Hoisery v. Shore*. A non party to the prior suit can invoke CE against a party to that suit if it is fair to that party.

Here, Wife is attempting to use non mutual offensive preclusion as a sword against Delta. In order to see if it would be fair to Delta, we must analyze *Parklane Hoisery v. Shore*.

Unfairness Factors From *Parklane*

Did the party against whom CE is being asserted have a full and fair opportunity to litigate the issue in case 1?

Here, Delta had an opportunity to litigate the issue in Case 1 seeing that there was a jury trial that occurred.

Thus, Delta had a full and fair opportunity to litigate the issue.

Did the party against whom CE is being asserted litigate the issue strongly?

Here, seeing how Husband was seeking \$100,000 in property damage in case 1, one would assume that Delta's legal team would put on their best show, and litigate to their best of their ability.

Thus, they litigated strongly.

No Inconsistent Findings On The Issue

Here, there are no facts to indicate that there are inconsistent findings on the issue.

Thus, there were no inconsistent findings on the issue.

Could P have adopted a wait and see strategy to avoid adverse judgement?

Here, Delta could argue that Wife waited four months from Case 1 to sue. Wife would make the case that she was injured from the accident and she had to heal before she was ready to appear in court.

The court would likely agree with Wife.

Thus, P did not adopt a wait and see strategy to avoid adverse judgment.

Was it Foreseeable to the party in Case 1 that another party in a subsequent suit would use CE offensively against them?

Here, Delta was aware that there was both Husband & Wife involved in the accident. It was foreseeable that after Husband sued, it was likely that the wife would follow.

Thus, it was foreseeable that Wife would sue.

The court properly granted the Wife's motion for summary adjudication.

2)

INTRODUCTION

The court was correct in denying the class certification and the court of appeals did err in refusing to hear the appeal, however, they would have certified the California judge's ruling.

CLASS ACTION

This joinder device permits a lawsuit to be brought by a class representative on behalf of a large number of persons whose interests are sufficiently related. The class must be certified (discretionary). If the judge refuses to certify, the class representative may appeal immediately and does not have to wait for the final judgement.

ELEMENTS

Commonality

This is when there is a common issue amongst the class members and the resolution of the issue will generate answers in one broad stroke.

Here, the issue that Pat is asserting is that the electric cars are equipped with defective batteries, causing injury. The resolution of the issue--the bad battery-- may generate an answer for everyone in the class.

Numerosity

Too many members for a practicable joinder. There is no magic number for what would constitute too many.

Here, Pat named four individuals from Texas as class members. Together, with Pat, this would be a total of 5 members. However, there is no threshold amount to determine what is "too many" and therefore, CarTech's assertion that the class was too small is without merit.

Typicality

The class representatives issue must be typical of the class members. This means that the class representative claim is typically similar to those of the class to avoid bias.

Here, Pat is asserting that the main issue in common is that there are cars being sold with defective batteries. There are no facts to indicate whether Pat owned a the car and had a typically similar claim.

Representative adequate

The representative must fairly and adequately represent the class.

Here, Pat's attorney was a new admittee and had little experience handling class actions. It may be argued that this representation would not fairly and adequately represent the class.

Class Representative

The class representative must be a member of the class and adequately represent the class's interest.

Here, there is no indication that Pat is the owner of an electric car, instead he is filing a suit on behalf of four class members who do in fact own the car, and who live in Texas. The fact that Pat lives in California does not suggest that he will not adequately represent the class's interest, however, there are no facts indicating whether or not Pat owned an electric car.

TYPE OF CLASS

TYPE 1: PREJUDICIAL

This occurs where if the the class would be adversely affected if each class member were to sue individually.

Here, this does not apply as the class is a damages class suffering from a bad battery.

TYPE 2: INJUNCTIVE OR DECLARATORY

This occurs where the defendant acted or refused to act on the grounds that affected the entire class. In this type of class action, the class cannot seek damages.

Here, as stated above, this does not apply as the class is a damages class.

TYPE 3: DAMAGES

This occurs where a common question predominates and class action is the superior way to handle this dispute over any other method.

Here, the common question that predominates over the entire class is whether they own a car with a defective battery. Class action may be the superior way to handle this dispute. However, CarTech may argue that this is not the superior way because the class is all based in Texas and may have other avenues--such as joinder.

CERTIFIED

CLASS CERTIFICATION

When the court certifies the class they must identify the: class, as this allows the court to determine who falls within the class and who doesn't. This is necessary to determine who will get notice and who will be bound by the judgement; the issues; the defenses.

Here, the court did not certify the class, and therefore the court is not required to identify any of these issues.

Thus, certification is not applicable as the court refused to certify.

COURT APPOINTS CLASS COUNSEL

The court will appoint class counsel, and the class counsel must fairly and adequately represent the class' interest. Some of the factors the court looks at are: the amount of work the counsel has done to investigate the claim; their experience handling class actions; knowledge of the law; and the resources counsel is willing to commit.

Here, CarTech argues that Pat's attorney is a new admittee and inexperienced. However, as stated above, experience is not dispositive. Rather, the court looks to a number of factors, Pat's attorney may have studied the claim for a significant amount of hours, he may be a top graduate of a prestigious law school, and may be willing to commit all of his resources to the case. However, because the facts do not indicate any of these suggestions apart from Pat being newly admitted and inexperienced with class actions, the court is likely to agree with CarTech that Pat's attorney is improper. Furthermore, the court appoints class counsel.

Thus, Pat's attorney will likely not fairly and adequately represent the class' interest.

NOTICE

When the court certifies the class they must send notice to all class members by mail notifying them that they are in class. The class representative must pay for the notice. The

notice must tell the class members that they may opt-out and if they do not opt-out they will be bound by the judgement. They may hire their own counsel and join the action. All class members will be bound by the judgement except those who opted out.

Here, CarTech argues that Pat must be required to serve personal notice to the individual class members. This is untrue. A class action notice must be sent by the mail by the court with the required information.

Thus, CarTech's assertion about notice is untrue.

DISMISSAL

If the parties want to dismiss or settle the case after they have been certified, the class must seek court approval. If the class has not been certified, they may freely dismiss or settle the case without court approval. However, the court may ask for members feedback. After approval, the ultimate decision lies with the court.

Here, there is no facts to indicate that the parties are trying to dismiss or settle the case. However, if the parties wanted to dismiss or settle the case, as they are not currently certified by the court, they are free to do so.

Thus, the parties may dismiss/settle if they would like.

SUBJECT MATTER JURISDICTION

Only the class representatives citizenship matters. The representative must be diverse of all defendants and the amount in controversy must exceed 75k. Thus, only the class representatives amount is counted.

Here, CarTech improperly asserted that the court lacked jurisdiction since the class members shared the same state citizenship. In class actions, only the class representatives citizenship matters, and Pat is a resident of California, while CarTech is a Texas-based

electric car manufacturer, and there are no facts to indicate if they do business outside of the state or if their nucleus is based in another state. Rather, all facts indicate that there is complete diversity. However, Pat is only claiming 8,000, and his claim therefore does not exceed the necessary threshold of 75k.

Thus, the California court would not have jurisdiction over the claim because only Pat's amount in controversy is being counted.

CLASS ACTION FAIRNESS ACT

Provides federal courts with jurisdiction over class actions that have limited diversity, where at least one plaintiff and one defendant are from different states, and the aggregated amount in controversy exceeds five million dollars. Defendants may remove qualifying class actions to federal courts without restriction.

Here, while there is diversity amongst at least one plaintiff, Pat, and one defendant, CarTech, the aggregated amount for the five plaintiffs is only 408k.

Thus, CAFA would not apply.

APPELLATE REVIEW

Appellate review is the process of reviewing the trial judge's ruling in light of the record to determine whether a reversible error has been committed. Appellate courts do not generally retry cases.

FINAL JUDGEMENT RULE

A final judgement is one that finally disposes of the case, where nothing remains to be done on the merits but to execute the judgement. Interlocutory appeals--non-final--typically can not be immediately appealed to avoid burdening the appellate court with

fragmented appeals. A notice of appeal must be filed within 30 days or 60 days if the US is a party.

Here, there was not a final appeal, but there are exceptions to the FJR.

EXCEPTIONS:

Writ of mandamus/writ of prohibition, interlocutory appeals act, collateral order doctrine, multiple claims/parties, injunction, and class action (discretionary, 14 days).

Here, Pat was correct in that he could immediately appeal the ruling on the class action, as this is one of the six exceptions to the final judgement rule.

REVIEWABILITY: Harmless/Prejudicial

The court of appeals will reverse a judgement if the judgement was prejudicial i.e. determined the outcome of the case.

Here, Pat may argue that the ruling was prejudicial as it determined the outcome of the case. By not certifying the class, the case was then dismissed and there was no final judgement on the case, nor was it actually litigated or necessarily determined. However, if the appellate court would hear the case, they would uphold the ruling as the class was not able to be certified.

Thus, the ruling was prejudicial.

SCOPE OF REVIEW

DE NOVO:

When the jury is given the wrong instruction on the law, and there is substantial evidence to support a jury finding. The verdict cannot stand.

Here, de novo would not apply as there was no jury in the suit, as there was no suit.

ABUSE OF DISCRETION

Where there was a discretionary ruling, the court of appeals will look for abuse of discretion. The court of appeals will not inject or substitute its own discretion for that of the California judge's.

Here, while the certification of a class is discretionary, the California court was correct in not certifying the class, and thus there was no abuse of discretion. The court of appeals will not interject its own discretion for that of the California judge's.

Thus, there as no abuse of discretion.

Finding of Facts:

The court will test the legal sufficiency of the facts to determine whether the verdict was properly supported by substantial facts. The court of appeals will affirm unless reasonable people could not have made that finding.

Here, there was no verdict, as the issue was about certifying the class.

Thus, there was no issue with the finding of facts.

Erroneous Judge: The judge's finding of facts will not be set aside unless the court of appeals finds that the facts found are clearly erroneous.

Here, as stated above, there was no finding on the facts.

Thus, the judge's findings were not erroneous.

CONCLUSION

The California court did not err in certifying the class. While the Court of Appeals did err in refusing to hear the appeal, if they were to hear the appeal based on an abuse of discretion if failing to certify the class, they would have found that the refusal was proper.

3)

INTRODUCTION

The court may deny Perry's protective order because he was injured by Daniel's boat as long as the injury is in controversy and there was a good cause shown to subject him to the exam. The court should not order Daniel to provide the maintenance records because they are not proportional to the needs of the case. The court may grant Perry's motion to compel because Walker fled the country.

INITIAL DISCLOSURE

Parties are required to disclose certain evidence within 14 days of a meet and confer. Failure to do so may result in the exclusion of the material at trial, to avoid trial by ambush.

Initial Disclosure

Must disclose identity of parties with discoverable information, documents, objects, and electronically stored material (ESI) in support of a claim or defense.

Here, there is no mention of whether the parties did not disclose this information to one another, and there is no mention of whether or not a meet and confer ever occurred.

EXPERT WITNESS

Identity and written report of potential expert witnesses to be used at trial. Expert witnesses hired to help a lawyer prepare their case are consulting experts and are not generally subject to discovery unless exceptional circumstances are found.

Communication between an expert witness and an attorney are protected and not subject

to discovery. To depose an expert a subpoena is required. Failure to disclose the identity of an expert witness may preclude their use at trial.

Here, Ian is not an expert witness, nor a consulting expert, rather he is a private investigatory, and his identity was also known by Perry.

Thus, disclosure of an expert witness does not apply.

Pretrial disclosure

At least 30 days before trial, a party must disclose all evidence (doc/testimonial) they are to use at trial, with a written description of its purpose.

SCOPE OF DISCOVERY

Parties may discover information that is not privileged, relevant to a party's claim or defense, and is proportional to the needs of the case.

PERRY PROTECTIVE ORDER

TOOLS OF DISCOVERY

MEDICAL EXAM

Where the medical or physical condition of a party is in controversy, upon motion and for a showing of good cause, the court may require that party submit to a physical or mental exam. This is the only discovery tool that requires a court order for the first instance.

GOOD CAUSE

The court must find that the moving party is unable to obtain information from other relevant sources, for example, previous examinations on the same condition.

Here, Perry was struck in the lake and was injured. This is a single, one-time accident and therefore previous exams on the same condition would not be possible. Daniel would be entirely unable to obtain this information from previous examinations, unless there were examinations of Perry immediately following the accident.

Thus, there is good cause shown.

In Controversy

Where the moving party places the condition of another party at issue. The moving party must show that the responding party has a physical/mental condition specifically relevant to the exam requested. Moving party cannot use rule 35 to go on a "fishing expedition," hoping to discover, through a battery of exams, a relevant condition.

Here, the damages would be directly proportional to the injury that Perry suffered from being struck. The medical examination is not one that is irrelevant to the case, but is instead central to the issue of the case and highly determinative.

Thus, the physical condition of Perry is in controversy.

PROTECTIVE ORDER

A party may seek a protective order when the discovery request imposes annoyance, embarrassment, undue burden, or is disproportional to the needs of the case. The party must certify that they attempted to resolve the issue independently (without the court) and attempted in good faith to have discussion with the requesting party through a request of a meet and confer. The court may deny, restrict, or grant with conditions.

Here, Perry was struck, and his injuries will be central to the damages that are awarded from Daniel's tortious conduct, which requires a showing of duty, breach, causation, and damages. Further, doctor/patient privilege is waived when a person puts their physical

condition in controversy, which is what Perry is doing by asserted that he was struck and injured by Daniel. The request is not highly annoying, would not subject Perry to embarrassment, is not unduly burdensome, and is not disproportional to the needs of the case, but is instead directly proportional to the needs of the case.

Thus, the protective order will most likely not be granted.

DANIEL MAINTENANCE RECORDS

Here, as stated above, the information requested may be non-privileged, relevant, and proportional. Perry's request is unduly burdensome and not proportional to the needs of the case because Daniel was struck by a boat that was operated by Daniel. The boat maintenance records would most likely have little to do with the negligent driving of Daniel. However, this is Perry's main cause of action, that Daniel failed to properly maintain the boat. Nevertheless, the past fifty years of information is irrelevant and excessively burdensome. If state law requires annual maintenance, with submission of these records to the state, then the only proportional records would be the last few years. The maintenance of the boat 49 years ago has little bearings on the state of the boat in a contemporary proceeding.

Thus, the court should not order Daniel to provide the maintenance records and Daniel may apply for a protective order.

PROTECTIVE ORDER

See Supra

Here, if Daniel certified in good faith that he tried to resolve this matter independently and that he tried to engage in discussions with Perry about the unruly request, then the court may properly grant Daniel a protective order.

Thus, there are preliminary steps that Daniel must take before a PO may be issued, but if Daniel can show that he did engage in these steps, a PO may be granted.

PERRY'S MOTION TO COMPEL

WORK PRODUCT DOCTRINE

Work product doctrine is material made in anticipation of litigation and is not subject to discovery unless there is a substantial need and there is an inability to obtain the information from other sources. Work product need not be made by the attorney and may be made by a party or a representative of it.

Here, the report that Ian has prepared following was directly prepared in anticipation of litigation. Daniel immediately hired an investigator to look into the event for him. Daniel may argue that Perry had ample time to investigate the claim himself, as he did not file the lawsuit until months after the incident. Further, the facts do not indicate when Walker fled the country, however, the judge may still be inclined to believe that Perry did have time to interview Walker himself. However, if the court does agree with Perry that Walker's fleeing, who is the only person to have seen the event, shows a substantial need and inability to get a detailed description to the details of the accident from any other source, then the court may then grant a motion to compel. Further, Ian is a representative of the party and the work product would apply to the document.

Thus, work product does apply to Ian's report, but if Perry were to receive the document, it would only include Walker's report, not Ian's assessment nor Ian's opinion.

ABSOLUTE WORK PRODUCT

A writing that contains an attorney's impressions, conclusions, opinions, or legal theories or research is absolute work product and is not subject to discovery under any circumstances, absent a waiver.

Here, if Perry were to receive Ian's report it would only include Walker's detailed account, as Ian's assessment that Daniel had no viable defense and Ian's opinion on Walker's credibility as a witness are absolute work product as they are impressions, conclusions, and opinions.

Thus, only Walker's detailed account may be subject to discovery.

ASSERTION OF WORK PRODUCT

An attorney must assert privilege or work product, providing a detailed report of the document in a privilege log. If there has been an inadvertent disclosure, the other party must notify the sender, and sequester, destroy or return the document, and the court will decide on whether a waiver has occurred.

Here, Daniel must first assert work product and provide a detailed description. However, even if he is to assert this privilege, Perry may still prevail showing that there is a substantial need and an inability to obtain the information from other sources.

Thus, assertion will not nullify the request to produce Ian's report.

MOTION TO COMPEL

If a question is refused, an interrogatory is objected to rather than answered, or a request for a document is refused, the discovering party may move for a motion to compel (and attorney fees for bringing the motion).

Here, Perry may successfully show that there is a substantial need for the Ian's report as he is the only one who saw the event and he gave a detailed account of how the event transpired. Therefore, when Perry requests that Daniel produce Ian's report, and Daniel expressly denied, this is an open refusal, and is directly necessary to the case.

Thus, the court may grant Perry's motion to compel.

VIOLATION OF MOTION TO COMPEL

If a party violates a motion to compel, then merits sanctions (plus attorney costs of filing the motion) and the party may be held in contempt of the court (no contempt for refusing to submit to a medical exam).

If Daniel further refuses the motion to compel, then this may merit sanctions and Daniel may be held in contempt. However, there is no indication that he has violated the motion to compel, as the motion to compel has not been ruled on.

Thus, Daniel has not at this moment violated a motion to compel.

IF THERE IS NO ANSWER, MERITS SANCTIONS

If there is no answer, the court may grant an establishment order, strike the pleadings of a disobedient party, disallow evidence of the disobedient party, dismiss if the P and a showing of bad faith or default judgement if the D and a showing of bad faith.

Here, there is no indication that Daniel has not answered.

Thus, sanctions would not apply.

END OF EXAM