

San Luis Obispo College of Law
Civil Procedure
Final Examination
Spring 2023
Prof. M. Rivas

General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question 1

While riding on the dunes, Dax came over the top of a dune and struck Pavel. Pavel went to the ER for their injuries and was treated by Dr. Pollard for a crushed leg. Pavel filed a complaint in federal district court, based on diversity jurisdiction, alleging negligence and seeking damages. In the complaint, Pavel also sought an injunction to keep Dax from riding on the dunes. Dax filed an answer denying negligence, and the parties engaged in discovery.

During discovery, Dax filed a motion requesting an order for physical and mental examinations of Pavel. Pavel failed to object. The court ordered Pavel to submit to the physical exam, but denied the motion as to the mental examination.

Pavel then sent a letter to Dax, advising Dax to attend a physical exam with Pavel's chosen medical expert, Dr. Pulaski. Pavel, helpfully, had already made the appointment and included the doctor's card with the letter.

Later, Pavel received a notice from Dax to depose Dr. Pollard. Pavel advised Dr. Pollard of the scheduled deposition. On the scheduled date, Dr. Pollard did not show up. Dax made a motion requesting that Dr. Pollard be held in contempt for failure to comply with a court order, as well as a motion compelling Dr. Pollard's deposition. The court found Dr. Pollard in contempt and granted the order compelling the deposition.

A month after the last pleading relating to jury-triable issues was served, Pavel requested a jury trial. Dax objected and argued that the request was untimely. Pavel responded that they had been in the hospital for complications from their injury and they made the request as soon as they were released.

1. Did the court err in ruling on Dax's motion to order the physical and mental examinations of Pavel? Is Dax required to submit to a physical exam? Discuss.
2. Was the court correct in its rulings on the deposition of Dr. Pollard? Discuss.
3. Will there be a jury trial? On what claims, if any? Discuss.

Question Two

In January 2021, Paul and Diego 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.

In February 2021, Paul decided to file a complaint against Diego. Paul claimed that Diego had brought him to the Deer Valley resort “fraudulently,” which then resulted in Paul’s injuries. Diego filed a motion for failure to state a claim, which was denied by the court.

At the same time, 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 summary judgment, which the court denied. After the trial, the jury returned a verdict for Paul and Paul was awarded the cost of the treatment.

In July 2021, Paul's back pain became so unbearable that he filed a lawsuit against Dave to recover for his personal injuries. Dave filed a motion to dismiss, arguing claim preclusion. The court granted the motion.

1. Did the court err in denying Diego’s motion for failure to state a claim?
2. Did the court err in denying Dave's motion for summary judgment?
3. Did the court err in granting Dave's motion to dismiss based on claim preclusion?

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Question Three

In May 2022, Pedro and Derek had just graduated law school and decided to go on a road trip. It was Derek's turn to drive (and Pedro's turn to nap) when they were involved in an accident with another vehicle. The driver of the other car, Penelope, and Pedro were both severely injured. Derek did not sustain any injuries.

In June 2022, Penelope sued Derek for her injuries. The evidence at trial showed that Derek had been driving while eating cereal, and using a bowl and a spoon. The jury returned a verdict for Penelope.

In August 2022, Pedro sued Penelope for damages. In a separate action, and relying solely on the judgment in *Penelope v. Derek*, Pedro sued also Derek for damages.

1. What effect, if any, does *Penelope v. Derek* have on Pedro's action against Penelope? Discuss.
2. What effect, if any, does *Penelope v. Derek* have on Pedro's action against Derek? Discuss.

SLO
CIVIL PROCEDURE
SPRING 2023
PROF. RIVAS
ANSWER OUTLINES

Question 1-Answer Outline

1. Did the court err in ruling on Dax's motion to order the physical and mental examinations of Pavel? Discuss.
Scope of discovery

Any relevant, non-privileged matter that is proportional to the needs of the case.

Physical/Mental Exams: Physical/mental exams of a party require a court order. Condition must be at issue and there must be a showing of good cause.

Here, the court properly granted the motion for a medical examination. Pavel's medical condition is clearly at issue, and Dax would be able to show good cause, because Pavel is asking for damages for his injury. As to the mental exam, the court properly denied the motion. Even though Pavel did not object, it does not appear that Pavel's mental health is at issue and so it can be assumed that Dax was not able to show good cause for the request.

Dax is not required to submit to a medical exam because Pavel did not request an order from the court. Moreover, there are no facts suggesting that Dax's medical condition is at issue so, even if Pavel had properly made a request of the court, Pavel would not be able to show good cause for the request.

2. Was the court correct in its rulings on the deposition of Dr. Pollard? Discuss.
Compulsory appearance of witnesses

Notice is sufficient to compel attendance of a party at a deposition. For a non-party, a subpoena is required to compel attendance.

Failure to comply with court order

Failure to comply with a court order requires a court order.

Motion to compel discovery

Movant must show that an attempt was made to avoid court intervention.

Here, the court was incorrect in its finding of contempt because there was no court order to begin with. A notice was sent, not a subpoena. This would be sufficient to compel Pavel to attend because Pavel is a party. Dr. Pollard is not a party, though, and so notice (even assuming it had been sent to Dr. Pollard) cannot compel Dr. Pollard to attend.

Even assuming there was contempt, which might allow an order to compel, there are no facts suggesting that Dax attempted to avoid court intervention by contacting either Pavel or Dr. Pollard after Dr. Pollard's failure to attend the deposition.

3. Will there be a jury trial? On what claims, if any? Discuss.

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

Timely request: A party must request a jury trial no more than 14 days after the last pleading directed to the jury-triable issue is served. If the request is not timely made, the court has discretion to grant the request.

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

Here, Pavel has a right to a jury trial as to damages because that is a claim at law and it can be assumed that, given Pavel's crushed leg, the amount will exceed \$20. The injunction requested is an equitable claim, and so Pavel does not have a right to a jury trial on that claim.

Pavel's request is not timely because it was made more than 14 days after the last pleading. However, the court retains discretion to grant Pavel's request. Given that the failure to make a timely request for jury trial was due to Pavel's injury, which was caused by Dax, the request would likely be granted.

If the request for a jury trial is granted, the claim for damages will be heard first. The injunction will be heard after, and the court will be bound by any factual findings made by the jury.

Question 2-Answer Outline

1. Did the court err in denying Diego's motion for failure to state a claim?

Complaint

Requires a short statement of jurisdiction, short statement of the claim showing pleader is entitled to relief, and a demand for judgment for relief.

Special pleading requirements for fraud

Must state with particularity those circumstances that establish fraud.

Motion for failure to state a claim

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

Here, Paul failed to state a claim for fraud. Their conclusory statement that Diego brought him to the resort "fraudulently" does not meet the requirement that fraud claims must be stated with particularity. Fraudulently is a legal conclusion and the complaint does not provide any information for Diego to be on notice as to how to defend against the claim. Therefore, the court erred in denying Diego's motion.

2. Did the court err in denying Dave's motion for summary judgment?

Motion for summary judgment

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

Here, the facts state that it is "unclear whether Paul's health declined due to his skiing injury or Dave's improper treatment." This means that the issue of causation is still in dispute and Dave is not, therefore, entitled to a judgment as a matter of law. Thus, the court did not err.

3. Did the court err in granting Dave's motion to dismiss based on claim preclusion?

Claim preclusion (res judicata)

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

Here, Paul has already sued and won against Dave once. There was a jury trial and Paul had already been awarded the cost of treatment. Paul may argue that the relief sought would not have been properly considered in the first action, which was basically a contract action. However, most courts look to whether the suit stems from the same transaction or occurrence. Both the suit for the cost of the treatment and the suit for the physical damages stem from Paul's single visit to Dave, so they stem from that same transaction. Thus, this second claim from Paul is barred under the majority view. The court did not err.

Question 3-Answer Outline

1. What effect, if any, does Penelope v. Derek have on Pedro's action against Penelope? Discuss.

Issue preclusion (collateral estoppel)

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

As a shield

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

Here, Penelope was the plaintiff in the prior action and so can use the previous action as a shield in Pedro's case against her.

In the previous action, there was a valid final judgment in the form of a jury verdict in Penelope's favor. The fact that evidence came out at trial of Derek's negligent act shows that the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the judgment of negligence against Derek.

2. What effect, if any, does Penelope v. Derek have on Pedro's action against Derek? Discuss.

Issue preclusion (collateral estoppel)

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

As a sword

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

Here, Pedro is trying to use the previous action as a sword against Derek because Derek was already found to be negligent. There was a valid final judgment in the form of a jury verdict against Derek. The fact that evidence came out at trial of Derek's negligent act of eating cereal while driving shows that the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the judgment of negligence against Derek. As the defendant in the previous action, Derek was a party, so courts would allow the use of the previous action as a sword against him.

Motion for partial summary judgment

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

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

1)

1. Did the court err in ruling on Dax's motion to order the physical and mental examinations of Pavel?

Scope and Proportionality

✓ The scope of discovery extends to relevant evidence that is reasonably calculated to lead to the discovery of relevant non privilege matter. Discovery must be proportionate to the needs of the case.

Mental/ Physical Exam: A physical or mental exam of a party requires a court order. A condition must be at issue and there must be a showing of good cause.

✓ **Physical Exam:** Here Pavel (P) was hit by Dax (D) while at the dunes. D crushed P leg and cause her to go to the doctor for her medical injuries. Since P injuries are at issue and P file a complaint in seeking damages for her injuries. There is a showing of good cause for the physical exam because P injuries are at issue. *Maybe one more sentence re: a medical exam would be nec. to discover the scope of the injuries + find an amount of \$ for damages.*

Thus, the court did not error on the physical exam.

✓ **Mental Exam:** Here the court ordered P to to submit to the physical exam, but denied the motion as to the mental examination. Here a condition must be at issue with P mental conditions There is noting in the facts that would lead to a metal exam. This would not be proportionate to the needs of the case because there was no showing of good cause for the reason for the mental examination.

Thus the court did not error on denying the motion for the mental exam. *Nice job answering the calls of the question.*

Is Dax required to submit to a physical exam?

Mental/ Physical Exam: A physical or mental exam of a party requires a court order. A condition must be at issue and there must be a showing of good cause.

Physical exam: Here D is not required to submit to a physical exam because there was no court order. There is no issues with D when he was riding on the dunes and came over the hill crushing P leg. There must be a showing of good cause that would require a physical exam. There is noting that would show good cause for D to get a mental exam.

Dax is not required to submit to a physical exam.

Yes, but you missed the facts that no court order was ever actually sought. Use the facts (letter sent to Dax).

2. Was the court correct in its rulings on the deposition of Dr. Pollard?

Depositions

A party may only take up to ten depositions. Additional depositions require ^{leave} ~~leaf~~ of court or stipulation of both parties. Depositions may not exceed 7 hours in one day. Parties are required to appear upon notice and the non parties are not required to appear without a subpoena.

Here, P received a notice from D to depose Dr. pollard. P advised Dr. Pollard of the scheduled deposition. On the Scheduled date, Dr. Pollard (Dr.) did not show up. Here Dr. pollard is a non party to the case. The Dr is a non party to the case he was given insufficient notice to appear for this deposition. A non party needs to be subpoenaed in order to be brought in to the court. The DR was not properly subpoenaed and proper notice was not given D gave the notice to P so that P can give it to the doctor.

Motion to Compel:

+ CONTEMPT

just reciting facts. try to have each sentence the facts to the law (using "because")

this is a term of art that isn't appropriate here

you have the idea but you need to tweak how you express it.

If a party or non party fails to comply with a good faith and permissible discovery request, the other party may file a motion to compel. The moving party must meet to show an attempt to meet and confer in order to avoid court intervention.

Here, D file a motion to compel the DR to testify to the Deposition. Here it ^{does} ~~doe~~ not state in the facts that that D met with the parties to avoid court intervention. This was not a permissible discovery request there was no Subpoena and notice was improper. ^{I wouldn't state it like this. It is permissible, but it was done in an improper fashion to be asking for a MOT to compel now.} [The court should have denied the motion to compel.] ^{separate line for conclusion.}

The court was incorrect on its ruling on the deposition with of Dr. Pollard. ^{Ah, I see.}

3. Will there be any jury trial? on what clams if any? ["]

Right to a jury trial

Based on the 7th Amendment a jury right attaches to legal claims in excess of \$20.00. Request must be made no more than 14 days after service of last pleading responsive to jury ^{triable} issues. Failure to make demand within 14 days after service of last responsive pleading directed to a jury- ^{triable} issue constitutes ^{waver} ~~waver~~ of party of any right to trial. Then the judge has the discretion to decide whether or not to grant a jury trial. Both parties must agree before a requests may be withdrawn.

Equitable vs legal :

^{this is good to memorize, but it's only a guide for you unless damages + injunctions are in your facts.}
Damages are legal, Injunctions are equitable. Jury hears legal claim first. Judge then hears equitable claim but is bound by the jury's finding of fact.

Legal Claim: Suit seeking monetary is a legal claim and guaranteed a Jury trial.

~~Should be about injunctions, not specific performance.~~

Equitable claim: Specific performance is not an equitable claim & is not guaranteed a Trial. *why are you talking about specific performance? Not @ issue. And if we were talking about it, if it's not equitable → then it's legal + would get a jury trial.*

Here, P injuries for breaking her leg medical expenses would ^{certainly} meet the 20 dollar minimum requirement for a right to a jury trial. P is also seeking an injunction to keep Dax from riding on the dunes. Specific performance is not an equitable claim & is not guaranteed at Trial. Therefore she would not be able to have a jury trial for her injunction. P will be entitled to a Jury trial for the damages that D cause P. However there is another issue in the facts, A month after the last pleading relating to jury-triable issues was served, P then requested a jury trial. P failed to make demand within 14 days after service of last responsive pleading directed to a jury- triable which constitutes waiver of party of any right to trial. Now the judge has the discretion to decide whether or not to grant a jury trial. Pavel responded that they had been in the hospital for complications from her injury and they made a request in good faith as they were released for the hospital. *Do these last facts make it more or less likely that a judge would exercise their discretion + allow a jury trial.*

↑
Is this a legal claim? Make sure to say it.

} Facts w/out law

Thus, P will have a jury trial for her damages but not for her injunctio.

equitable = no jury trial
if not equitable = jury trial

review the remedy of Specific performance. It does not apply here.

END OF EXAM

2)

Did the court err in denying Diego's motion for failure to state a claim?

COMPLAINT complaint

The Claim: A claim must contain a short statement establishing the jurisdiction of the court, why the plaintiff is entitled to relief, and demand for judgment of relief.

FRAUD

Here the validity of the complaint will be determined by the plausibility of Paul statement establishing why he is entitled to relief. Plausibility requires the statement to be more than possible, but less than probable. The fact must be such as to allow a judge to make a reasonable infuriate as to the probability of the complaint. the facts establish that Paul believes Diego had brought him to Deer Valley resort fraudulently which resulted in his injury. Because he is asserting fraud the facts in the complaint must be plead with greater particularity. It is doubtful Paul will be able to establish that his complain it probability because he and Diego were friend, it would be planing involved to do such a thing would be complex, Paul went with Diego on is own accord, and the higher standard of particularity would make it more difficult. Ultimately, Paul's complain will be insufficient.

This is the issue

How did Paul not allege fraud w/ particularity?

~~In conclusion, a motion for failure to state a claim is determined by a judge using their own experience and common sense. Here, the judge would not think the claim would be plausible. Thus the court did not err when denying the claim.~~

Did the court err in denying Dave's motion for summary judgment.

Summary Judgment: Granted for the entirety of the case or on a single issue. The movant must establish that there is no genuine dispute of fact, and they are entitled to judgment as a matter of law.

^
material

Here, a disputed fact is one that is represented by evidence from both parties. Paul's complaint is backed backed evidence establishing that after his appointment with Dave

3)

Call 1: Pedro v. Penelope

Issue Preclusion Should follow PARTIAL SUM. JUDGMENT

To successfully preclude an issue, there must be a (1) final judgment ^{actually litigated + essential} ~~on the merits~~, (2) involving mutual parties, one of which was a party in the previous action, (3) where the issue in the second action is material _{essential} for the judgement in the first.

Here, Pedro was the passenger in the vehicle driven by Derek when Derek and Penelope got into an accident. In June 2022, Penelope successfully sued Derek for her injuries, finding that Derek had been driving while eating cereal, using a bowl and spoon (negligence). In the June case, Penelope v. Derek, Penelope had a successful claim against Derek that went to trial, and the jury returned a verdict in favor of Penelope. Penelope will be asserting Derek v. Penelope as a shield _{YES!} against Pedro.

(1) In the matter of Pedro v. Penelope, Penelope is going to assert issue preclusion as a shield to show that she was not the one at fault for the accident. The June case was a final judgement on the merits in favor of Penelope, finding that Derek was negligent. Although Pedro was injured from an accident involving Penelope, Pedro is ~~not able to assert~~ _{precluded from asserting} a claim showing that Penelope is liable for the injury.

(2) In Derek v. Penelope, Penelope was the plaintiff, suing Derek for injuries. Penelope was successful in her action. In Pedro v. Penelope, Penelope is now the defendant. In issue preclusion, this is not essential that they are on the same side of the claim-- what matters is if the parties are mutual, and one of the parties was in the previous action. Pedro was not a party to the action in Derek v. Penelope. Penelope was a party in the _{work a bit on mutuality. You're close, but not quite. It is necessary that the party using issue preclusion (Penelope) have been a party in the 1st case.}

action Derek v. Penelope. Penelope are mutual parties in this action, and Penelope was a party in the previous action.

(3) In Derek v. Penelope, the action sought was a negligence claim, which resulted in Derek being liable, and Penelope being awarded a verdict in her favor. In Pedro v. Penelope, Pedro is attempting to find Penelope liable for damages. The claim Pedro would assert is negligence, stating that Pedro suffered damages (injuries, and potentially his vehicle) as a result of Penelope's negligence. Because Derek v. Penelope found in favor of Penelope, the court determined that Derek was liable for damages, and Penelope was not negligent in the action. The claim of negligence was material in determining Penelope's damages, and it is material for determining Pedro's damages.

—— looking for "essential to the judgment" in the 1st case.

A court would allow for the issue to be precluded in Pedro v. Penelope via partial summary judgment below.

Partial Summary Judgment → should be 1st issue since it's the motion to bring before the court which would then contain your argument for issue preclusion.

work on this rule

For a successful motion for partial summary judgment, there must be an issue that was successfully precluded, or a stipulation stating that there is not a ~~material dispute~~.
dispute of material fact.

Here, in Pedro v. Penelope, Penelope will file a motion for partial summary judgment, stating that she was a party in a previous action pertaining to this claim, and that action was actually litigated and received a final judgment on the merits. Penelope is able to use Derek v. Penelope as a shield to defend herself from negligence claims stemming from the same nexus or event. Penelope, in Pedro v. Penelope, is able to assert the judgment in Derek v. Penelope, which finds that she was not the cause of the accident, therefore she was not legally found negligent for the accident, and she is not liable for Derek's damages. Here, she may assert the same argument. She was not found negligent in Derek

this is issue preclusion which would leave no dispute of material fact as to negligence.

v. Penelope, and she cannot be found negligent, under issue preclusion, in Pedro v. Penelope.

A court would likely grant Penelope's motion for partial summary judgment.

Call 2: Pedro v. Derek

Issue Preclusion *should follow PARTIAL SUM. JUDGMENT*

To successfully preclude an issue, there must be a (1) final judgment *actually litigated* ~~on the merits~~, (2) involving mutual parties, one of which was a party in the previous action, (3) where the issue in the second action is ~~material for the judgment~~ *essential to the* judgment in the first.

Here, Pedro was the passenger in the vehicle driven by Derek when Derek and Penelope got into an accident. In June 2022, Penelope successfully sued Derek for her injuries, finding that Derek had been driving while eating cereal, using a bowl and spoon (negligence). In the June case, Penelope v. Derek, Penelope had a successful claim against Derek that went to trial, and the jury returned a verdict in favor of Penelope. Pedro will be asserting Derek v. Penelope as a sword against Derek for damages. *YES!*

(1) In the matter of Pedro v. Derek, Pedro will assert that Derek was found liable for damages that Penelope sustained in Derek v. Penelope. In June of 2022, the jury in Derek v. Penelope returned a verdict in favor of Penelope, finding that Derek's negligence was the cause of the action. There was a final judgment in favor of Penelope. In Pedro v. Derek, the facts and circumstances arise from the same common nucleus of operative fact, IE, the car crash. Because Derek was found negligent in Derek v. Penelope, which resulted in damages awarded to Penelope, and Pedro was injured from the same accident, Pedro is able to use Derek v. Penelope as a sword against Derek to preclude the issue of negligence.

(2) In Derek v. Penelope, Derek was the defendant. In Pedro v. Derek, Derek is still the defendant, and Pedro and Derek are mutual parties. Pedro was not a party to the action in Derek v. Penelope, therefore, Pedro is a mutual party. *Work on mutuality. Here, the court would allow the use as a sword where it is fair to the defendant.*

(3) In Derek v. Penelope, the action sought was a negligence claim, which resulted in Derek being liable, and Penelope being awarded a verdict in her favor. In Pedro v. Derek, Pedro is seeking damages as a result of the same accident that occurred in Derek v. Penelope. Pedro was injured as a result of Derek's negligence, and Pedro is able to assert that, because Derek was found negligent in Derek v. Penelope for the May 2022 accident, Derek is also to be found negligent, and to be the cause of injuries in Pedro v. Derek.

talk about why the issue was "essential to the judgment."
A court would find that Pedro can successfully preclude the issue of negligence against Derek using Derek v. Penelope.

Partial Summary Judgment *Start w/ this issue*

work on this rule For a successful motion for partial summary judgment, there must be an issue that was successfully precluded, or a stipulation stating that there is not a ~~material dispute~~. *dispute of material fact*

this is issue pred. which would result in no dispute of material fact. Here, in Pedro v. Derek, Pedro will file a motion for partial summary judgment, stating that Derek was a party in a previous action pertaining to this claim, and that action was actually litigated and received a final judgement on the merits. Pedro is able to use Derek v. Penelope as a sword against Derek to show that Derek was negligent, and the cause of the damages that Pedro suffered, stemming from the same nexus or event. Pedro is able to assert the judgement in Derek v. Penelope, to preclude any trial involving Derek's negligence or fault from the injuries that occurred in May 2022 related to this claim.

A court would likely grant Pedro's claim for partial summary judgment.

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END OF EXAM