

Civil Procedure

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Quiz 3: Pleadings, Joinder, & Summary Judgment

Answer & Explanations

1. The Carbolic Smoke Bomb Co. sells a product that the company claims will prevent colds and flu. Carlil buys one of the company's smoke balls, uses it according to the directions, but nevertheless becomes ill with the flu. Carlil sues the company for fraud. The elements of Carlil's fraud claim are as follows: (1) The defendant made representations about the nature and quality of its product, knowing that those representations were false, (2) the defendant made those representations with the intent to induce purchases of its product, (3) the plaintiff bought the product in reliance on the false representations, and (4) the plaintiff suffered damages as a result of the false representations. Carlil's complaint includes these allegations:

- Defendant manufactures and sells a product called the Carbolic Smoke Ball. Defendant's packaging and advertisements for the Carbolic Smoke Ball contain fraudulent claims about the nature and quality of the product.
- Plaintiff purchased a Carbolic Smoke Ball and used it as directed, but became ill with the flu. As a result, she incurred damages including medical expenses and pain & suffering.

If the company files a motion to dismiss under FRCP Rule 12(b)(6), how should the court rule?

- a. Grant the motion, because it is implausible that Carlil would have believed the company's advertisements.
- b. Grant the motion, because Carlil has not provided sufficient detail in support of her claim.
- c. Deny the motion, because the complaint contains a short and plain statement of the grounds for relief.
- d. Deny the motion, because Carlil may be able to prove the elements of her claim at trial.

The correct answer is B. Under Rule 9, allegations of fraud require more specific pleading. It is not enough for Carlil to allege that the Company made fraudulent claims about the product. She must say what those claims were. In addition, an element of the fraud claim is that the plaintiff bought the product in reliance on the defendant's false claims. Carlil only alleges that she bought and used the product, without alleging she did so based on the allegedly fraudulent claims about the product.

Questions 2 & 3 are based on the following facts:

Pauline sues Darla in federal court in the state of Euphoria, asserting a claim for intentional infliction of emotional distress (“IIED”). Under Euphoria state law (which governs Pauline’s claim), the elements of an IIED claim are: (1) the defendant engaged in extreme and outrageous conduct, (2) the defendant did so with the intent to cause the plaintiff severe emotional distress, and (3) the plaintiff suffered severe emotional distress as a result of the defendant’s conduct. These are the relevant paragraphs of Pauline’s complaint:

- Plaintiff Pauline was engaged to be married to Harold Henderson. Shortly before their scheduled wedding, Henderson broke off the engagement, telling Plaintiff he was no longer in love with her and had fallen in love with Defendant Darla.
- On information and belief, at various times before Henderson broke off the engagement, Defendant told Henderson lies about Plaintiff and pretended to be in love with Henderson, for the purpose of inducing Henderson to break off the engagement.
- As a result of Defendant’s actions, Plaintiff has suffered severe emotional distress.

Wherefore, Plaintiff Pauline requests judgment against the Defendant in an amount greater than \$75,000.

2. If Darla moves to dismiss the complaint under FRCP Rule 12(b)(6), on which of the following grounds is the court most likely to grant the motion?
 - a. Euphoria state law does not recognize claims for intentional infliction of emotional distress for a third-party’s interference with an engagement.
 - b. The complaint does not explain in sufficient detail how Darla allegedly induced Harold to break off the engagement and what emotional distress Darla allegedly suffered.
 - c. The complaint does not adequately specify and establish the basis for the amount of damages sought.
 - d. None of the above.

The correct answer is A. A claim can be insufficient in two ways. The most common way is that the complaint lacks sufficient factual allegations to plausibly establish the elements of the claim. But the other way is that the complaint asserts a purported claim that is simply not valid as a matter of law, regardless of the facts. If Euphoria state law doesn’t recognize an IIED claim based on the defendant’s interference with a planned engagement, then it doesn’t matter what facts Pauline alleges, she simply has no claim.

3. If Darla moves to for sanctions against Pauline and her attorney under Rule 11, on which of the following grounds is the court most likely to grant the motion?
 - a. The Euphoria Supreme Court (the state’s highest court) has held that there is no claim under Euphoria law for intentional infliction of emotional distress for a third-party’s interference with an engagement.

- b. Pauline has no evidence that Darla said or did anything to prompt Harold's actions, and Pauline's attorney made no effort to investigate this before filing the complaint.
- c. Pauline brought her suit to retaliate against Darla for embarrassing Pauline at a party a few weeks before Harold broke off the engagement.
- d. All of the above.

The correct answer is D. Answer A is correct, because, if the state's highest court has decided there is no such claim, then the claim lacks any possible merit (unless Pauline has some non-frivolous argument for modifying the law, which the question does not suggest). Answer B is correct, because even if there was a potentially non-frivolous claim, Rule 11 requires that the plaintiff have a factual foundation for any factual allegations in the complaint and that the plaintiff or their attorney conduct a reasonable pre-filing investigation of the facts. Answer C is correct, because, where the claim lacks any possible legal merit and factual foundation, Pauline's purpose in bringing the claims is improper.

4. In October 2013, Priscilla bought a set of cordless power tools manufactured by Drecker Tools, Inc. The set included a power drill, a circular saw, and a rotary sander, along with a charger and battery pack that fits each of the tools. In May 2019, while Priscilla was using the drill, the bit came loose and lodged in her eye. In July 2019, Priscilla sued Drecker for negligence. In her complaint, Priscilla alleged that the accident resulted from a defect in the drill's design and/or manufacture. In August 2019, Drecker filed and served its answer, admitting that it manufactured the drill but denying that there was any defect in the design or manufacture.

In September 2019, Priscilla's house was destroyed in a fire that started when the charger exploded while Priscilla was charging the battery pack. In November 2019, Priscilla moves for leave to amend her complaint. The proposed amended complaint asserts these new allegations & claims against Drecker:

- A design and/or manufacturing defect in the charger caused the explosion and fire that destroyed Priscilla's house.
- The instructions that came with the drill did not warn against using it without wearing eye protection, and Drecker's negligent failure to provide such a warning contributed to Priscilla's injury from the flying drill bit.

Under the applicable state law, the statute of limitations for these claims is 6 years from the date of purchase of the product, which in this case ran out in October 2019. If Drecker opposes the motion, should the court grant leave to amend?

- a. No, because the amendment would be futile since the statute of limitations has run out for both new claims.
- b. Yes, but only to add the design/manufacturing defect claim based on the charger explosion, because Priscilla knew or should have known about the lack of a warning against the using the drill without eye protection before she filed her original complaint.

- c. Yes, but only to add the claim for negligent failure to warn based on the injury from the flying drill bit, because the claim based on the charge explosion is barred by the statute of limitations.
- d. Yes, for both claims.

The correct answer is C. The negligent failure to warn claim based on the drill bit injury arises from the same occurrence as the claim asserted in the original complaint. This new claim thus relates back to the date of original filing, and it not barred by the statute of limitations. On the stated facts, there is nothing to suggest that the amendment is in bad faith or unfairly prejudicial to Drecker. However, the claim based on the battery charger fire arises from a separate, logically independent, occurrence. The fact that the drill and the battery charger came were part of a set is not enough to make these two claims arise from the same transaction or occurrence. The claims are not about the terms of the sale, but rather about two different alleged defects in two different pieces of equipment that caused two different injuries.

Questions 5 & 6 are based on the following facts:

Andrea has a weekend house in the Pennsylvania countryside. Bart owns a goat farm adjacent to Andrea's vacation house. Bart's goats have repeatedly slipped through the gap and bathed in a creek that runs through Andrea's property, fouling the creek with their droppings. After this happens for the tenth time, an enraged Andrea shoots and kills the offending goat. Several days later, after searching in vain for his missing goat, Bart notices the animal's carcass next to the creek on Andrea's property. Bart rushes into Andrea's yard, accusing her of killing his goat. A fight ensues, in the course of which, Bart hits Andrea over the head with a shovel.

- 5. Andrea sues Bart, asserting two claims: (1) battery, alleging that Bart intentionally hit her with the shovel, and (2) trespass, seeking damages for the cost of cleaning up the mess that Bart's goat left in the creek. Is joinder of these claims proper?
 - a. Yes, even if the claims arose from two distinct transactions or occurrences.
 - b. Yes, because there is a factual connection between the two incidents giving rise to the claims.
 - c. No, because the two claims are based on logically distinct conduct that occurred days apart.
 - d. No, because a plaintiff may not combine tort and property claims in the same suit.

The correct answer is A. Rule 18 allows a party to join multiple claims against the same opposing party, regardless of whether or not they arise from the same T/O. The two claims here would most likely be regarded as arising from separate occurrences, because they are logically independent: they involve different conduct causing different injuries at different times. The only connection is that the fight with the shovel was apparently motivated by Andrea's killing the goat after it fouled her creek. But that wouldn't really be relevant to the battery claim.

6. Assume that Andrea asserts only the claim for battery based on her injuries from being hit with the shovel. In his answer, Bart denies intentionally hitting Andrea with the shovel and alleges that he did so accidentally while trying to wrest the shovel away from Andrea after she hit him with it. Bart also asserts two counterclaims: (1) a claim for battery, alleging that Andrea intentionally hit him with the shovel after he accused her of killing his goat ("Claim 1"), and (2) a claim for trespass to chattel, seeking damages for the loss of the goat ("Claim 2"). Which of the following is correct?
- a. Both claims are compulsory counterclaims.
 - b. Both claims are permissive counterclaims.
 - c. Claim 1 is a compulsory counterclaim, and Claim 2 is a permissive counterclaim.
 - d. Claim 1 is a compulsory counterclaim, and Claim 2 is not a proper counterclaim.

The correct answer is C. Claim one arises from the same occurrence (the fight with the shovel) as Andrea's claim, so it is compulsory. Claim 2 arises from a separate and logically independent occurrence (Andrea's assassination of the goat), so it is permissive.

7. Adele buys a new boat, and hires Belinda to transport it to Adele's lake house. While Belinda is en route, she is involved in a collision with Craig, who is driving a brand new Cadillac. Craig and Belinda both sustain serious injuries in the collision, and both of their vehicles, along with the boat, are totaled.

Adele sues Craig for the damage to her boat, which she alleges was caused by Craig's negligence. Craig denies that he was negligent, and alleges that the accident was caused by Belinda's negligence. Which of the following is true?

- I) Craig may join Belinda as a third party defendant, asserting claims against Belinda for his personal injuries and the damage to his car.
 - II) Craig may assert a counterclaim against Adele, alleging that Adele is vicariously liable for Belinda's negligence because Belinda was acting as Adele's agent in transporting the boat.
 - III) If Craig asserts a counterclaim against Adele seeking to hold her vicariously liable for Belinda's negligence, he may join Belinda as a co-defendant seeking to hold her liable for her own negligence.
- a. I, II, & III
 - b. I & II
 - c. II & III
 - d. II only

The correct answer is C. Craig may only join Belinda as a third party defendant (I) to assert a claim for contribution or indemnification on Adele's claim, not to assert a claim for the damage to his own vehicle and injuries. Craig's counterclaim against Adele (II) arises out of the same occurrence as Adele's claim against Craig, so it is a compulsory counterclaim. Craig may also join Belinda as a co-defendant on that claim (III), because his claims against Adele and Belinda arise out of the same occurrence and will involve at least one common question of law or fact (i.e. whether Belinda was negligent).

8. Anton sues Beverly for breach of contract. Anton also has a claim against Claire, Beverly's spouse, for defamation. Anton wants to sue Beverly & Claire together in the same suit. Would joinder of Beverly & Claire as co-defendants in the same action be proper?
- Yes, because as a married couple Beverly & Claire have common interests in any claims in which they are parties.
 - Yes, if the court concludes that the interests of judicial economy and convenience to the parties would be served by deciding the claims together.
 - No, if the claims against Beverly & Claire arise from different transactions and occurrences.
 - No, because a plaintiff may not join co-defendants where the plaintiff asserts a contract claim against one defendant and a tort claim against the other defendant.

The correct answer is C. Under RULE 20, a plaintiff may join co-defendants only if the plaintiff has a claim against each co-defendant arising out of the same transaction/occurrence and there is at least one common question of law or fact. Neither of those conditions is satisfied here.

9. Gene sues Employer, alleging that he was fired in violation of the terms of his employment contract. Employer moves for summary judgment, supporting the motion with affidavits, deposition testimony, and documentary evidence that Employer contends show there is no genuine dispute of material fact surrounding the circumstances of Gene's firing, and that Employer is entitled to judgment in his favor as a matter of law because the facts do not establish any contractual breach. What must Gene do to avoid summary judgment in favor of Employer?
- Produce evidence in admissible form showing the existence of a genuine issue of material fact regarding the discharge.
 - Point to the parts of Gene's pleadings that allege a breach of contract.
 - Show that evidence already in the record supports a reasonable inference in Gene's favor.
 - Show that evidence already in the record, or additional evidence provided in response to the summary judgment motion, would, if offered in admissible form at trial, support a reasonable inference in Gene's favor.

The correct answer is D. As the plaintiff, Gene will have the burden of proof at trial on the elements of his claim. On a motion for summary judgment, Gene has the burden of production, regardless of whether he is the moving party or non-moving party. To meet that burden, he must point to evidence that would, if offered in admissible form at trial, be sufficient to establish the relevant element(s) of this claim. The evidence doesn't have to be in admissible form at the summary judgment stage, as long as Gene could offer that evidence in admissible form at trial.

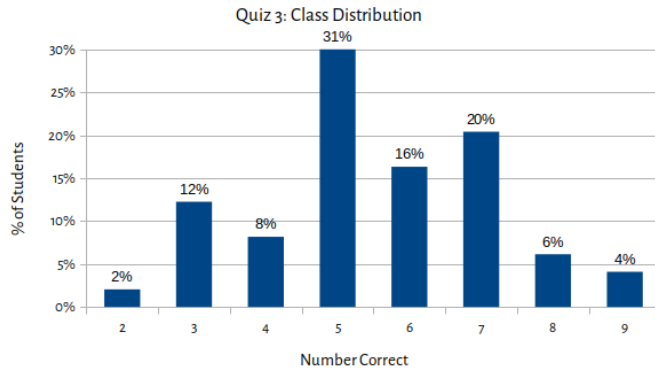
10. Pam hires Deb to install a ceiling fan in her home. A few weeks after Deb completes the job, the ceiling fan comes loose and falls down, hitting and injuring Pam, who was unlucky enough to be standing underneath it at the time. Pam sues Deb in federal court for negligence in the installation of the fan. After the parties have conducted discovery, Deb moves for summary judgment, supporting the motion with an affidavit from an expert engineer who examines the fan and ceiling and opines that the fan was correctly installed, but that the ceiling material was weakened as a result of internal decay not visible to Deb at the time she installed the fan. Pam responds, opposing Deb's motion for summary judgment and seeking summary judgment in Pam's favor. In support, Pam offers an affidavit from her own expert who examined the ceiling and found no decay, and concludes that the fan had merely been attached to the sheet rock, not to a ceiling beam as would have been appropriate given the weight of the fan. Pam's expert further opines that, had there been decay sufficient to weaken the ceiling, a competent fan installer would have identified it. How should the court rule?

- a. Grant Pam's motion, if the court determines that her expert is more credible.
- b. Grant Deb's motion, if the court determines that her expert is more credible.
- c. Deny both motions, because neither has adequate evidentiary support.
- d. Deny both motions, because there is a genuine issue of material fact.

The correct answer is D. Where each party has offered evidence that could support a jury finding in their favor at trial, there is a genuine issue of material fact and the court may not grant summary judgment. It is up to the jury to decide which expert is credible and more persuasive.

Summary of Results

Class Distribution



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Item Distribution

