

### EXAMINERS' ANALYSIS OF QUESTION 8

Landlord Inc.'s motion raises issue preclusion. The preclusion doctrines of res judicata and collateral estoppel "serve an important function in resolving disputes by imposing a state of finality to litigation where the same parties have previously had a full and fair opportunity to adjudicate their claims." *Nummer v Dep't of Treasury*, 448 Mich 534, 541 (1995). Collateral estoppel, or issue preclusion, is at issue here. "Collateral estoppel precludes relitigation of an issue in a subsequent, different cause of action between the same parties when the prior proceeding culminated in a valid final judgment and the issue was actually and necessarily determined in that prior proceeding." *Rental Props Owners Ass'n of Kent Co v Kent Co Treasurer*, 308 Mich App 498, 528 (2014).

"Generally, for collateral estoppel to apply three elements must be satisfied: (1) a question of fact essential to the judgment must have been actually litigated and determined by a valid and final judgment; (2) the same parties must have had a full and fair opportunity to litigate the issue; and (3) there must be mutuality of estoppel." *Monat v State Farm Ins Co*, 469 Mich 679, 682-84 (2004) [internal quotation marks and citation omitted]. Mutuality of estoppel is not necessary when collateral estoppel is being used defensively. *Id.*

Here, collateral estoppel bars Smith from relitigating whether mold existed in Apartment A. In the district court proceeding Smith raised the issue of mold, and used it as a defense to the action. The district court, in rendering judgment in favor of Landlord Inc., ruled that Apartment A did not contain mold and was not uninhabitable. Determining that fact was essential to the judgment, as it was crucial to deciding whether rent was due during the relevant time period. Additionally, both parties to the district court proceeding had a full and fair opportunity to address the issue, and though not necessary to prove, there is mutuality of estoppel in that Landlord Inc. would also be precluded from raising any issue relative to the existence of mold.

An additional issue is whether Smith's children are estopped from raising the issue of mold. Although the children

were not parties to the district court case, collateral estoppel also applies to privies of the parties in the district court action. *Rental Props Owners Ass'n*, 308 Mich App at 529-30. Privity exists between Smith and her children given their functional working relationship as a family unit as well as their shared interest in establishing the existence of mold in Apartment A. *Adair v State*, 470 Mich 105, 122 (2004). Indeed, the children's interests--as residents of the apartment--were presented and protected during the district court proceedings insofar as Smith asserted that Landlord Inc. failed to provide a safe residence and that she and her children had suffered negative health consequences as a result.

Consequently, for the reasons stated, Landlord Inc.'s motion should be granted.