

Question 1

Removal

USC 1441: Removal OK if Fed. Ct. has SMJ and No Def. resides in State of Fed. Dist. Ct. where removed

USC 1453 Specific statute on removal of class actions

SMJ: either 1331 or 1332

1331: Here all claims are State...privacy, fraud, etc. No 1331 SMJ

1332: Complete diversity of adverse parties and \$75K in damages

Domicile is basis...here Def. Corp. INC. in Calif, however, muscle or nerve test indicates Nev. Hertz

Case suggests Nev. Facts silent as to Plain. Domicile, however, if Calif., diversity exists

Amount in controversy: class action members' damages do not aggregate, could argue privacy claim meets required amount. Good faith estimate.

Class Action

FRCP 23(a)

Numerosity, Commonality, Typicality, Adequacy of Rep. all appeared to be satisfied

Motion for Judgment

Feds have mandatory disc. Exchange

Rule 26 defines discovery as "non-privileged...reasonably calculated to lead....."

Rule 37 provides for sanctions for failure to comply; sanctions are incremental and progressive to offense. Monetary, issue, then death knell. Here death knell too soon material requested, though private, meets Rule 26 requirements even if not ultimately not admissible

Question 2

MSJ

Rule 56 “no genuine issue of material fact in dispute” Moving party’s burden to meet, if met, burden shifts to non-moving party to show disputed facts exist. All inferences in favor of non-movant
Here waiver applies to neg. of others, Max’s own negligence is disputed...a material fact

Discovery

Rule 26 “not privileged...reasonably calculated to lead....” relevant to claim.

Rule 35 Med Exams...good cause, medical condition of a party must be at issue. Employee of party is a party. Issue here could be argued either way

Jury Exclusion

Rule 47 covers examination of prospective jurors

Fein vs. Permanente...cannot exclude cognizable class. Here, electricians maybe OK; family members
Definitely too broad

Appeal

Substantial evidence test, however, in general Ct. of Appeal gives deference to fact finder unless “no reasonable jury could reach the result” Rule 52(a) Rule 61 Ct. generally ignores errors not essential
To the Judgment, does not violate substantial rights of party. Here Motion was within Trial Ct.
Discretion but could be argued wither way. Abuse of discretion requires “plain error”
Probably a “harmless error”, no perfect trials

Question 3

Preclusion Doctrine, formerly known as Res Judicata includes issue and claim preclusion
Claim preclusion requires same claim or sufficiently closely related and a Final Judgment.
When J for Plaintiff. He may not pursue same action against same party....merger

When J is for Defendant. Plaintiff is barred from 2nd suit

Policies: judicial economy, prevents double recovery, promotes finality, fairness to parties

Re: determination of same claim; two approaches, same evidence and same transaction

Re: determination of same party, concept of privity applies

Here, cases involve different parties not in privity...claim preclusion does not apply

Issue preclusion

Formerly collateral estoppel, a fact or matter of law actually litigated and essential to the Judgment. When established in case 1 may, if requirements are met, be precluded from relitigation in Case 2. Mutuality requirement, pre Parklane Hoisery, required the parties to be identical. The modern approach allows for non-mutual use of issue preclusion when fair to the parties.

Here negligent design of the aircraft was actually litigated and essential to the J even though different parties. Considering policy it would not be unfair to preclude AA from relitigating that issue in case 2.

The facts are unclear as to who was the pilot in case 1 where jury found "pilot error" 20% comparative

The issue for discussion was whether that finding met "essential to the J. requirement" was met or not.

That issue could be argued either way.