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CivProII\_(Cohen)\_LS2\_final

Cohen

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## Golden Gate University School of Law

ID: (Exam Number)  
Exam Name: CivProll\_(Cohen)\_LS2\_final  
Instructor: Cohen

Grade: \_\_\_\_\_

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### Summary

The decision on res judicata is probably incorrect as parties to the first suit are not the same or in privity. The attorney should have tried issue preclusion instead. The class action is inappropriate because the class is vague. It is also unclear from the facts if numerosity is met and if the class is adequately represented. The amendment to add Dan to the suit relates back, but it fails because it adds a party to the suit which can not happen. It was proper for a jury trial to hear the damage suit against Dan, but it was not appropriate to hear the injunction suit against Samdisco.

### Decision on Res Judicata

A valid final adjudication of a claim will be res judicata as between parties and those in privity. The claim and claims that could have been brought will not be allowed to heard again. In order to be valid, there must have been jurisdiction over the claim. There must have been a final decision where there is no more issues to be heard regarding the claim and there was an opportunity for the claim to be tried. Here, I will assume the court had jx in the prior case, so it was a valid decision. There was a final decision as Samdisco(S) won. I assume it was adjudicated as, again Samdisco won. How they won is not relevant as long as there was an opportunity to try the case. Where the defense fails is it is not the same parties as the original suit assuming Rita and Paul were not part of the first suit as either named parties or part of the representative class, if there was one. Without knowing who the actual plaintiffs were in the first suit, the issue of privity can not be decided. The defense claim of res judicata would probably

fail.

The issue that the attorneys should have raised was issue preclusion or collateral estoppel. If there is an identical issue which is actually litigated and decided on the merits, the issue may be precluded from being raised again by the parties or those in privity. If the state of Commonwealth is a non-mutual state, then the issue may be used by those in privity as a sword or a shield. Walking through the analysis, it appears to be an identical issue: an injunction to correct the intersection. The issue would need to have been actually litigated and it is unclear how S won. If it was a default judgment or another method of victory not requiring actual opposition by the other party, then the issue was not actually litigated. There are insufficient facts to decide. To be actually decided, the earlier claim would need to be decided on ultimate facts or foreseeable facts pertinent to the current case. Again, it is unclear what facts were used to determine the prior decision. Since Paul and Rita were probably not in privity to the first suit, Commonwealth would need to be a non-mutual state for S to use as a shield against future litigation on the issue. If each of these were met, then the issue would be barred from the trial and S could have saved themselves a suit.

### Motion for Class Action

I will assume for purposes of analysis that Commonwealth follows federal rules for class actions. To be a class action, there are six mandatory criteria (4 from FRCP and 2 judge made) and then the class must meet one of four other criteria. A class must meet the following:

Numerosity: The number of plaintiffs must be too large for an effective joinder any other way

Commonality: There must be one question of law of fact common to all members

Typicality: The claim of the class representative must be similar to all other members

Adequate representation: There must be no conflicts of the class representative with the other members and the representative counsel must not have any conflicts and be competent to handle the action.

Class ascertainable: The class must be able to be presently defined with some specificity

Class representative must be a member of class in order to represent the class.

A class must meet one of the following four:

Injunctive relief for actions taken by defendant which affects all.

Monetary damages for actions taken by defendant which affects all.

Defendant is subject to inconsistent or multiple damage claims

Plaintiff may not be able to obtain an adequate remedy.

Here, it is unclear if the class meets the numerosity test. The only two plaintiffs discussed are Rita and Paul. They could easily be joined instead of a class action. Generally, there need to be at least 40 plaintiffs for a class action. If there are no more plaintiffs then the test fails.

The question of law which affects all class members is the injunction to protect all future harm at the crossing area. The test is met.

The class representatives claim is similar to the other class members. They use the intersection

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and they want it to be safe, just like the other members. This test is passed

It is unclear for the facts if there are any conflicts between the representatives and the other class members. Paul may have a conflict because of his damage suit with Dave. It is not clear what the qualifications are of the attorney. If he has never tried a class action before or represents S in other actions, he is not qualified. Since it is unclear, it is not certain Rita and Paul and the lawyer adequately represent the class.

It is also unclear how ascertainable the class is. All people who might be harmed in the future is too vague. It could include unborns, tourists, foreigners or just residents. The class would need to be defined more narrowly to pass this test.

Rita and Paul are part of the class as defined. They will be people who want to be protected from future harm. This test is passed.

The class meets the criteria of seeking injunctive relief for actions taken by defendant which affects all. It meets one of the four it needs to meet.

Overall, the class fails because it is defined too vaguely. It also may fail the numerosity test and adequate representation.

#### Motion for Amendment

The issue is if the amendment made by Paul can relate back to his original pleading to beat the statute of limitations. An amendment may relate back to the original pleading if it is part of the same transaction. To change a party, there are additional requirements: it must be due to a mistaken identification of the party; the party must have known, prior to the statute running, of the action and but for the mistake, he would be named; the party can not be prejudiced in his defense.

Here, Don told Dan of the suit on Dec 31. The statute had expired on September 15. However, a party is allowed up to 120 days after the statute for service meaning the last day of the running of the statute would be January 15. Since Dan was told on Dec 31, it is within the time frame of the statute. Dan acknowledged the mistaken ID meaning he was aware of the mistake. The amendment also related to the original transaction of the accident. Would Dan be prejudiced? It does not appear so from the facts as Don had already proceeded with a defense. Dan could use the defense or ask for some time from the court to prepare. It seems the amendment relates back to the original pleading.

However, an amendment to change parties can not be used to add a party to a claim. The proper thing to do would be to have replaced Don with Dan and the suit to proceed. Since this did not happen, the amendment was inappropriate.

Decision on Jury Trial

→ facts

Again, I will assume Commonwealth follows federal rules on jury trials. A jury trial is guaranteed by the seventh amendment for claims of legal remedies available at common law as it existed at the time. In general, a claim should be analyzed and those claims seeking damages are entitled to a jury trial and those seeking equitable relief are not. (Trespass is an exception as it was considered a legal remedy at the time). If there is a mix of legal and equitable relief sought, the jury should decide the legal claim first and then the judge should rule on the equitable claim. (Clean up doctrine allows judge to decide incidental damages in an equitable relief claim. Here, damages are not incidental)

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Here, the jury should have heard the claim against Dan and Don and decided on damages.

Once completed, the jury should have been dismissed and the judge should have ruled on the injunction (equitable relief). S's appeal should be upheld.