

**JULY 2000 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

QUESTION

Bigcorp is incorporated and headquartered in State B. While in State B, Paul, a citizen of State A, was severely injured by a defective power saw he had purchased at a store owned by Bigcorp in State B. Paul brought a products liability action for \$ 100,000 against Bigcorp in a federal district court in State B, based on diversity of citizenship.

As discovery proceeded, Bigcorp disclosed that, although it manufactures its own power saws, the particular power saw that allegedly injured Paul had been manufactured in State A by Amcorp, which is incorporated and headquartered in State A. Amcorp and Bigcorp generally conduct business solely in their respective states, but sell surplus goods to each other twice a year.

Paul sought leave to amend his federal court complaint to name Amcorp as a defendant. Bigcorp opposed the motion, claiming that such a joinder would defeat diversity, and moved for the dismissal of the action because of the impossibility of proper joinder of Amcorp. The federal court dismissed Paul's complaint.

Paul then filed suit against Bigcorp and Amcorp in state court in State B. Amcorp filed a motion to quash service of summons contesting personal jurisdiction over it. The State B court determined that it lacked personal jurisdiction over Amcorp and dismissed it from the action. Paul voluntarily dismissed his action against Bigcorp without prejudice.

Paul then brought his products liability action in state court in State A, naming Amcorp and Bigcorp as defendants. Bigcorp moved for dismissal of Bigcorp from the action on the ground of res judicata, and the State A court granted the motion.

1. Was the federal court correct in dismissing the action on the ground of the impossibility of proper joinder of Amcorp? Discuss.
2. Was the state court in State B correct in dismissing Amcorp from the action on the ground that it lacked personal jurisdiction over Amcorp? Discuss.
3. Was the state court in State A correct in dismissing Bigcorp from the State A action on the ground of res judicata? Discuss.

**JULY 2000 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

ANSWER A

Paul v. Bigcorp - Joinder

Compulsory Joinder

Compulsory Joinder should be granted whenever the parties in the case move for it and one of the following conditions must be met. Either, the parties cannot obtain complete relief without the joinder of the third party, or the lack of joining that party will result in a multiplicity of suits, or the rights of the third party will be materially prejudiced by the action. Joinder motions can only be made by the parties in the suit.

Here, when B moved for compulsory joinder, the court should have examined all three bases. First, B would have argued that neither it nor P could obtain complete relief without the missing party. P would be unable to obtain complete relief because it is possible that both B is not liable at all, and therefore, P would recover nothing, or that B and A are jointly and severally liable and that B may not have sufficient funds to pay for the injuries to P. On the other hand, B would also argue that it could not obtain complete relief, since it would no doubt like to claim that A is either entirely liable or partially liable for the injury to P and that B would be prejudiced if it could not obtain indemnity or contribution in the same action against A.

Second, B would have argued that without joining A, there would have been the risk of dual suits with inconsistent results and inefficient use of the court's time. If B is only partly liable (under a joint and several liability theory of negligence) or only vicariously liable (on a strict liability theory), then B is entitled to damages from A in contribution or indemnity. Likewise, should B be found not liable, P still has a corporate claim against A. Under either scenario, someone (either B or P) would be forced to file suit again to assert a claim against A.

Third, B would correctly argue that A would be materially prejudiced by the exclusion of A from the suit. This is because essential issues to the products liability case, like whether the chainsaw was defective, whether the defect caused the injury, the amount of damages suffered, and B's vicarious liability for the actions of A, will be decided in this case. This means that should A try to contest these findings in later litigation, A will be barred by collateral estoppel from contesting these issues. Therefore, A will be materially prejudiced if B's motion is denied.

Therefore, the court should have joined the parties if possible.

Permissive Joinder

Permissive joinder should be granted whenever a party moves to join a third party because the claims against that party involve the same transaction or occurrence and involve the same questions of law and fact.

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

Here, the same transaction results in potential liability of both A and B - the purchase and use of the chainsaw. Likewise, there are several common questions of law and fact, including causation, damages and whether the product was in fact defective.

Therefore, the court should have joined the parties if possible.

Jurisdiction requirements

Separate jurisdiction is required for parties who are joined to an action. Without jurisdiction, the court cannot join the claims.

Here, the original jurisdiction between the parties (P & B) was diversity jurisdiction. Therefore, the joined party's jurisdiction must also satisfy diversity.

Diversity jurisdiction

Diversity jurisdiction requires two requirements be met.

First, the parties must be completely diverse - meaning each side must be diverse from the other side. In addition, the claim must amount to more than \$75,000, in total from all defendants.

Here, the claim is not an issue. Paul sought \$100,000 from the original defendant, and therefore the jurisdictional amount is not an issue.

However, Paul is a citizen of State A. Amcorp is also a citizen of State A, because it is incorporated there. Since the two parties are on opposite sides of the case, diversity jurisdiction is destroyed and the court has no jurisdiction to hear the case if A was to be a party. Therefore, A cannot be a party.

Proceeding without a necessary party

A federal court can proceed with a case without a party that should be joined through compulsory joinder only if the following factors are considered. First, can the court fashion a remedy such that the parties can obtain relief without the necessary party? Second, to what extent is the missing party prejudiced? Third, what alternative forums are available?

As for the remedy the court can fashion, the court can easily grant a full award of damages to Paul from B alone, since the latter is likely vicariously liable or jointly and severally liable with A. Therefore, this prong is satisfied.

As for the prejudice to the missing party, in this case the prejudice is questionable. As outlined above, the court may determine such issues as causation, damages and defectiveness of the product; however, should P or B sue A in a later action, those issues will probably not be precluded by collateral estoppel or res judicata. Res judicata requires the same parties in the

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

case, while collateral estoppel requires the same parties when the doctrine is used as a sword. Therefore, A will still get its day in court and will not be unduly prejudiced.

Finally, there are alternative forums available (i.e., the state courts) but those may be similarly limited by personal jurisdiction (see below) and be unable to address all the claims.

Therefore, the court should proceed with the action of P v. B even though A cannot be joined.

Personal Jurisdiction - P v. A & B

Traditionally, personal jurisdiction was assertable by a state only when the defendant was in the state, was a domiciliary of the state, or otherwise consented. International Shoe extended this to allow for personal jurisdiction so long as due process is not offended.

Due process requires that the defendant had minimal contacts with the state, that the claim be reasonable, and that there be notice to the defendant. In addition, personal jurisdiction must be authorized by a state statute. Since no statute is indicated here, we will assume that State B allows personal jurisdiction to the extent allowed by due process.

Minimal contacts

Minimal contacts are satisfied by a balancing test of three requirements: purposeful availment, the state interest in protecting its citizens in its own forum, and the fitness between the conduct undertaken in the state and the claim.

Purposeful availment

Purposeful availment is when the court finds that the defendant has taken advantage of the state and its resources to conduct business.

Here, A may not have personally availed itself of State B since it does no regular business in State B. In addition, it does not appear to have any factories or other offices or channels of distribution in State B. However, Paul will successfully argue that A uses State B by utilizing Bigcorp as a distributor of its goods. For that reason, Amcorp uses Bigcorp as a distributor, and indirectly avails itself of State B.

State interest

The State of B has an interest in protecting its citizens from the torts of others. However, here, Paul is not a citizen of State B, and therefore State B's interest seems weak. However, Paul did purchase the saw in State B, and therefore State B should have a strong interest in this matter.

Close fit

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

Here, the actions of Amcorp are closely related to the suit that Paul is bringing. He is claiming a products liability action for a chainsaw purchased in State B and as discussed above, Amcorp does business in State B through Bigcorp. Therefore, there is a close fit.

Reasonableness of the jurisdiction

Personal jurisdiction also requires an analysis of the reasonableness of the suit in that state. Courts balance the burden on the defendant with the state's interest in protecting the plaintiff.

Here the state's interest in protecting the plaintiff is discussed, above. In addition, the burden to Amcorp is not very severe, since it does business with Bigcorp in State B and since State B is an adjoining state of State A.

Therefore, the jurisdiction is reasonable.

Notice

Here, Amcorp had notice of the case against it through valid and proper service.

Therefore, personal jurisdiction against Amcorp in State B was proper.

Res Judicata - P v. A & B

Res judicata (or claim preclusion) is appropriate whenever the following conditions are met:

Valid judgment on the merits

Res judicata only applies when there is a previous valid judgment on the merits. This includes any involuntary dismissal based on the facts of the case.

Here, Paul has tried to sue Bigcorp in two different forums. First, there was the federal action which was dismissed on grounds of failure to join and improper jurisdiction. Since that dismissal was not based on the merits of Paul's case, it does not lead to res judicata.

Also, Paul tried to sue Bigcorp in state court, and voluntarily dismissed Bigcorp without prejudice. Since this was not a determination of fact (the way a dismissal with prejudice would be) and since it was voluntary, there is no supportable claim for res judicata.

Same Claim

Res judicata requires the same claim actually be litigated. While in the past that meant the same cause of action, it now includes any claims arising out of the same transaction or occurrence.

**JULY 2000 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

Here, Bigcorp would prevail because Paul's claim is always the same: it was products liability in federal court and products liability in State B.

Same parties

Unlike collateral estoppel, res judicata applies only to the same parties. Here, Bigcorp is asserting res judicata against Paul properly, since it was Paul in the previous two cases (State B and federal court) that Bigcorp is claiming led to res judicata.

However, because there has been no determination on the merits, there can be no res judicata.

ANSWER B

1. Impossibility of Joinder

The issue is whether joinder of Amcorp would defeat diversity in Paul's initial action in the federal court in State B and, if so, whether Amcorp was an indispensable party such that dismissal of the entire suit was proper under the circumstances.

Federal Jurisdiction

All suits filed in federal court must satisfy the requirement that the federal court have valid subject matter jurisdiction and personal jurisdiction. Subject matter jurisdiction must be either based on a federal question or a federal court's diversity jurisdiction. Here, Paul's claim is solely based on tort and not any applicable federal constitutional; statutory or regulatory claim - therefore, the federal question prong of federal jurisdiction is not applicable. Thus, jurisdiction must be based on diversity.

To be valid, diversity jurisdiction must involve complete diversity among the parties, i.e., no plaintiff must share the state citizenship of any defendant. The state citizenship for diversity purposes is determined for individuals by determining their domicile. Domicile is that state to which a person lives and intends to return. Here Paul is a citizen of State A and is thus clearly domiciled in State A.

A corporation's citizenship for diversity purposes is the sum of (a) its state of incorporation and (b) its place of incorporation or its primary center of manufacturing. Here, Bigcorp is incorporated and headquartered in State B and no indication is given that its predominant activities are in State B: in fact it is stated that they are also located in State A. Therefore Bigcorp is a citizen of State B only and thus complete diversity exists in the initial formulation of the first action because Paul is a citizen of State A and Bigcorp is only a citizen of State B.

Amcorp

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

Amcorp is incorporated and headquartered in State A. Moreover, its manufacturing is stated to occur in State A - therefore Amcorp is definitely a citizen of State A. Since Paul and Amcorp are both citizens of State A, had Paul initially filed a diversity action in the federal court of State B involving Amcorp as a defendant then complete diversity would be defeated. This is true notwithstanding the fact that the amount in controversy is met.

Amount in Controversy

Paul, to qualify for diversity jurisdiction, must also state a claim against each party in excess of \$75,000. Although a party may not aggregate claims against different parties to meet this minimum dollar requirement, here it is likely that Paul has a good faith claim against both Bigcorp and Amcorp. Under product liability principles, both the manufacturer and the retailer of a defective product causing injury are jointly and severally liable to the victim. Therefore, here Paul has a claim against both companies for the full \$100,000 based on the joint and several liability of the tort action.

Joinder of Amcorp

However, the problem remains that complete diversity would be defeated if Paul had originally filed his claims against both companies. The issue is, does this analysis change by virtue of the fact that Paul now seeks to join Amcorp as a defendant.

Necessary Joinder

A party is a “necessary” party if the existing parties cannot get complete relief without joinder of the party, or if one of the parties would be prejudiced by the nonjoinder of the absent party by virtue of the risk of inconsistent judgments or multiplicity of suits, or if the absent party would be unable to protect its interests because of a stake in the subject matter of the current suit.

Here Amcorp is likely a necessary party because the existing defendant, Bigcorp, will argue that it is entitled to full indemnification from the manufacturer, Amcorp, for any product liability claim from a consumer. If the court finds as such, then it must be determined if the party is indispensable such that the case should be dismissed rather than proceed in the absence of the party.

Here, if Paul seeks to join Amcorp as a defendant, it is clear that independent jurisdictional grounds must exist to join Amcorp. Although under the ancillary form of supplemental jurisdiction a federal court has discretion to hear claims not independently meeting diversity even if the original claims are based on diversity, that is not the case when the plaintiff seeks to add a party or a claim. When the plaintiff is the party adding the new party, the applicable doctrine is the pendent jurisdiction branch of supplemental jurisdiction. Under that area of law, claims may be added only if the plaintiff has a federal question claim. Since here Paul has no federal question claim, supplemental jurisdiction is impermissible in the form Paul is attempting.

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

Thus Amcorp is a necessary party and joinder is not permitted in the manner attempted by Paul. If the court could fashion relief in a manner that would not prejudice Bigcorp, then it is proper to proceed and Amcorp is not “indispensable.” It is noteworthy that a retailer is equally liable to a victim of a defective product as the original manufacturer. Therefore, it was not proper for the court to determine that Amcorp is “indispensable” such that Bigcorp is so prejudiced by nonjoinder of Amcorp that the proper solution is to dismiss the claim entirely. Rather, the court should have allowed the suit to proceed.

Ancillary Jurisdiction Revisited

This conclusion is further buttressed by the fact that Amcorp could have been properly joined by Bigcorp joining Amcorp as a party by filing a claim for indemnification against Amcorp. Such a claim would fall under ancillary jurisdiction because the joinder would be initiated by a party other than the plaintiff. Under ancillary jurisdiction, the court has discretion to hear claims not otherwise meeting the jurisdictional requirements of diversity, even if the original claim was entirely under diversity, so long as the claim is related to the same transaction or occurrence and relates to a claim of indemnification. Although Paul would still not be able to file a direct claim against Amcorp as a third party defendant (pendent jurisdiction analysis would still apply) since under the substantive law both parties are liable to Paul jointly and severally, the court could validly determine that any prejudice to Bigcorp could be alleviated by a third party complaint for indemnification against Amcorp. Since it is a claim for indemnification and involves the same transaction as the principal suit, the court could exercise its discretion in hearing the claim for indemnification under ancillary jurisdiction.

In conclusion, although Paul cannot join Amcorp in his suit in State B, the court should not dismiss the action because although Amcorp is a necessary party it is not indispensable and Bigcorp’s potential prejudice from nonjoinder could easily be cured by a third party complaint for indemnification against Amcorp.

2. Personal Jurisdiction

To validly exercise jurisdiction, a state court must have personal jurisdiction over the parties. Traditionally, personal jurisdiction was based on presence, domicile or consent to be sued. Here, Amcorp was domiciled in State A and had no manufacturing activities in State B. Therefore traditional bases are absent.

Long Arm

Therefore, jurisdiction over Amcorp by State B’s state court must be based on State B’s long arm statute. Although the applicable statute is not mentioned in the facts, presumably State B has such a statute. If it specifically allows the exercise of jurisdiction over a party who causes a tort in State B or if it is an unenumerated statute allowing exercise of jurisdiction to the full extent of the constitution, then the first prong of analysis is satisfied and the exercise of jurisdiction is

JULY 2000 CALIFORNIA BAR EXAMINATION ESSAY QUESTIONS AND SELECTED ANSWERS

Civil Procedure

valid if it satisfies the requirements of the due process clause of the Fourteenth Amendment of the Constitution.

Due Process

The due process clause requires that State B's exercise of jurisdiction over Amcorp satisfy both minimum contacts and fairness analysis.

Contacts

First, to be valid, Amcorp must have contacts in State B such that it has purposefully availed itself of the rights and privileges of the law of State B and it must be foreseeable that Amcorp would be hauled into court in State B. Here, although Amcorp has no offices or manufacturing activities in State B, it sells surplus goods to Bigcorp for that company's resale twice every year. It was known to Amcorp that Bigcorp sold its products in State B. Thus Amcorp was deriving revenues from sales which it knew were occurring in State B. Thus it can be said that Amcorp purposefully availed itself of the privileges of doing business in State B and that it was foreseeable that a citizen of State B would be injured by a product and sue Amcorp in State B based on these contacts.

Fairness

Even if minimum contacts exist, exercise of jurisdiction over Amcorp must also be such that it does not offend traditional notions of fairness and substantial justice. This involves a balancing of the relatedness of the contacts of Amcorp with State B and the subject matter of the instant suit, the interest and convenience of the parties in litigating in State B, and the interest of State B in providing a forum for redressing the type of harm pled by Paul. Here, the contacts of Amcorp in State B, although probably not systematic and continuous, are related to the subject matter of the instant suit because Paul purchased a surplus good (according to Bigcorp) sold by Amcorp to Bigcorp. The injury derived from this distribution and purchase of the Amcorp product. Next, Amcorp is a large corporation with sufficient funds to travel to a state like State B to defend a suit arising from its revenue producing activities in that state.

Paul however is not a citizen of State B such that his convenience does not favor the forum. Finally, although Paul is not a citizen of State B such that the state has a strong interest in providing Paul with a forum, State B could argue that its interest in fostering tourism and travel to State B are sufficient to find its interest in exercising jurisdiction.

On balance it is fair to exercise jurisdiction over Amcorp because of the relatedness of the contacts and the subject matter of the suit at issue and because Paul chose this forum. Thus the court was incorrect in dismissing Amcorp from the action on personal jurisdiction grounds.

3. Res Judicata

**JULY 2000 CALIFORNIA BAR EXAMINATION
ESSAY QUESTIONS AND SELECTED ANSWERS**

Civil Procedure

A court, whether federal, or state, may not hear a claim when it is banned by res judicata. For that doctrine to operate as a bar, the second action must involve the same plaintiff(s) and defendant(s) as the prior lawsuit asserted by the moving claimant. Next, the prior lawsuit must have resulted in a final judgment on the merits. Finally, the prior suit must have involved the same “claim.”

Here, there are two prior suits which were dismissed: The federal suit by Paul against Bigcorp and the state court suit against Bigcorp and Amcorp by Paul. The State A suit does not involve the same parties as far as Amcorp is concerned based on the State B federal action but does involve the same parties to the state claim.

Moreover, the products liability claim is the same claim as that of the two prior State B claims because it arises from the same alleged tort and injury.

However, neither prior suit were final judgments on the merits. The federal case was dismissed for inability to join an indispensable party. This results in dismissal without prejudice and does not constitute a final litigation on the merits. Similarly the second case was dismissed as to Amcorp for lack of personal jurisdiction. Moreover Paul was granted leave to dismiss the claim against Bigcorp without prejudice. Thus, the second case was not litigated to a final judgment on the merits of the claim. Thus the state court in State A incorrectly dismissed the claim by Paul because res judicata did not apply.