

# Civil Procedure Bar Exam Essay Question LN CP 02-00

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Below is a sample civil procedure essay question and model answer from a prior bar exam.Â Â

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Question:Â

Peter Packard, a Georgia resident, was at a shopping mall in Florida when he experienced a heart attack and stopped breathing.Â Police Officer David Doogood, responding to a 911 call arrived at the scene moments later.Â Someone in the crowd was in the process of performing CPR on Pete.Â Some onlookers asked Officer Doogood whether he was going to help Pete.Â Officer Doogood was trained in performing CPR, but insisted that he wait for an ambulance to arrive.Â In the meantime, Pete died.

Peteâ€™s estate filed suit against Officer Doogood in federal court for \$5,000,000, alleging that Pete was in Officer Doogoodâ€™s â€œfunctional custodyâ€• and that Doogoodâ€™s actions, taken under color of state law constituted deliberate indifference in violation of Peteâ€™s federal civil rights.Â However, the federal district court dismissed the claim with prejudice on the ground that the estate willfully refused to comply with court ordered discovery.Â Peteâ€™s estate thereafter filed suit against Officer Doogood in Georgia state court under Georgiaâ€™s wrongful death statute.Â This time the estate alleged that Officer Doogoodâ€™s conduct was grossly negligent and that it resulted in Peteâ€™s death.

Officer Doogood has moved for summary disposition, arguing that the estateâ€™s state case be barred by res judicata.Â

You are the judge assigned to Estate of Pete Packard v David Doogood.Â Ignoring any issues regarding governmental immunity, how would you rule on Doogoodâ€™s motion?Â Assume that the federal court would have jurisdiction over the estateâ€™s state law claim on the basis of diversity of citizenship.

Model Answer:

This is a civil procedure question.Â Â

Issue:

Does refusal to comply with a court ordered discovery amount to a final determination on the merits?

Is the Estate of Pete Packard's claim barred by the doctrine of res judicata?

Rule of Law:

Res judicata (which is latin for "a matter [already] judged") is a doctrine which bars litigation of a claim which was litigated in a prior proceeding and where a final judgment was rendered.Â Res judicata bars re-litigation of the cases between the same parties.Â

Application of Rule of Law:

Estate of Pete Packard would argue that there was no final judgment because the federal district court dismissed their claim "with prejudice" and that their original claim was never litigated because it was "dismissed" and thus they never received a final judgment.

The Estate may also argue that they are bring different claims and in different courts under the collateral issue theory.Â

Court's would argue that dismissal of a case with prejudice is a final judgment on the merits.Â In addition, the Court would also hold that the Estate's claim arises out of the same conduct of Officer Doogood, so re-litigation will be precluded.Â

Conclusion:Â

Court holds that since the Estate's claim was dismissed with prejudice, the Estate is estopped from relitigating it in Georgia state court under the doctrine of res judicata.Â The Court grants Officer's Doogood's motion for summary disposition.Â Â