

AMENDMENT REVIEW PROBLEM

Paul was attacked by a mugger, and he suffered physical and emotional injuries for which he later sought legal redress. He wasn't sure of the identity of his attacker, but he believed it was most likely Dan, so Paul sued Dan in federal court. Dan consistently denied any involvement in the attack, and he told Paul the attacker was probably Dave. Paul ignored Dan's speculation and pursued his suit, but later in discovery, Dan identified three witnesses who credibly asserted that Dan was with them when Paul was attacked. Paul ultimately admitted he had the wrong man, and he moved to amend his complaint to dismiss Dan as a defendant and add Dave. The court granted this request.

Immediately after being served with Paul's amended Complaint, however, Dave moves to dismiss on the grounds that the statute of limitations had run several days before he was served. Paul opposes this motion on the grounds that his original complaint was filed before the statute of limitations had run, and the amendment relates back to the time of the filing of the original complaint.

Should the court dismiss the case against Dave?

- A) No, because the claim against Dave in the amended complaint arose out of the same conduct transaction or occurrence set out in Paul's original complaint.
- B) No, because the court granted leave to amend, as in a case of mistaken identity like this, "justice so requires."
- C) No, but only if Dave realized within the first 90 days of the case that Paul had mistakenly sued Dan.
- D) Yes, because Paul did not make a "mistake" concerning the liable party's identity, as Dan told him right away that it was probably Dave, yet Paul inexcusably delayed adding Dave as an alternate defendant while he had the chance.