

## AMENDMENT ASSESSMENT EXERCISES

1. 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.

2. Paul suffered a concussion when he was among the dozens of protesters struck by various police officers' batons during a demonstration. After recovering from the incident six months later, Paul sought legal representation to recover for his physical and emotional injuries. He wasn't sure of the identity of the officer who struck him, and there were at least 50 officers on the scene, so his lawyer sued the officer's employer, City, in federal court, and he filed the suit against City and "John Doe," a placeholder for the name of the responsible officer, which Paul and his lawyer expected to be revealed in the discovery process. It took seven more months, however, for Paul's lawyer to discover through video and other evidence that it was most likely Officer Dan. She immediately moved to amend Paul's complaint to name Officer Dan as a defendant. The court granted this request.

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

Should the court dismiss the case against Officer Dan?

- A) No, because the claim against Officer Dan in the amended complaint arose out of the same conduct or occurrence set out in Paul's original complaint, and in a case of unknown identity like this, "justice so requires."
- B) No, because Officer Dan should have known that he was the proper party to be sued for Paul's injuries, and in a case of unknown identity like this, "justice so requires."
- C) No, because Officer Dan should have known before he was served that Paul had mistakenly sued "John Doe."
- D) Yes, because Paul did not make a "mistake" concerning the proper party's identity, as "John Doe" is not a real party and offers no basis for distinguishing among the dozens of officers on the scene; Paul simply did not know who the proper party was until he discovered this later, after the statute of limitations had run, which was too late.