Advanced Legal Research
Practice Materials Exercise
Sample Answer

Name: _________________________

Note: For each question, in response to “what did you find?” please provide:
   ▪ The search you used to find the answer
   ▪ The citation to the specific article or section in the resource used
   ▪ A brief explanation of what is contained there and how it helps with the client’s case.

You may consult the Practice Materials PowerPoint in Content on D2L for information on the sources you are asked to use below.

1. Your firm represents Carmela Soprano, whose husband, Tony, disappeared some five years ago. While enjoying the winter weather in Tucson, Tony went out for a hike on Mount Lemmon; no one has seen or heard from Tony since then, despite a massive search by local authorities and family friends from New Jersey. The senior partner wants to see what kind of proof is needed to declare someone dead due to extended absence. Your job is to find some practice materials that might be helpful in pursuing an effort to have Tony declared dead. The partner said to start by looking in AmJur Proof of Facts. What did you find?

On Westlaw type AmJur Proof and select the database from the drop down menu. Run a search such as: ti(death /15 presum!). Or you can type in natural language search such as: declaration of death due to absence. A relevant document is: Presumption or Inference of Death from Unexplained Disappearance, 45 Am. Jur. Proof of Facts 3d 307 (Originally published in 1998).

2. Impressed with what you found in Proof of Facts. the partner now wants you to look to see how Arizona evidence law treats presumptions regarding absence as an indication of death. The partner wants you to consult the Arizona Law of Evidence (part of the Arizona Practice Series). What did you find?

On Westlaw type in Arizona Law of Evidence and select the database from the drop down menu. You can run a search or more simply, look in table of contents under Law of Evidence. Chapter 3—Presumptions, 1 Ariz. Prac., Law Of Evidence § 301:5, states: In the same vein, A.R.S. § 12-509(A) provides that “[a] person absenting himself from the place of his last domicile for five years successively shall be presumed dead in any action wherein his death comes in question, unless proof is made that he was alive within that time.” The word “proof” in the second clause of this statute is ambiguous, since that word has been used as a synonym sometimes for persuasion, and sometimes for
evidence; and the ambiguity is compounded by the use of the word “made.” Thus, it is unclear whether the presumption created by § 12-509(A) imposes on the party against whom it operates the burden of persuasion or the burden of production.

3. Just after you handed in your research about presumption of death due to absence to the senior partner, Carmela reported that Tony, or what was left of Tony, had been found. Apparently he somehow was in a car at a remote railroad crossing at the same time as a train arrived. Now you need to find some trial practice materials that address railroad accidents. This **partner said to look in AmJur Trials.** What did you find?

On Westlaw type in American Jurisprudence Trials and select the database from the drop down menu. You can run a search such as: ti(railroad /4 accident). The second article listed is on point. You can also run a natural language search such as: railroad crossing accidents. The first article is on point. Railroad Crossing Accident Litigation, 135 Am. Jur. Trials 119.

4. Now that the true cause of Tony’s death has been discovered, another partner in your firm thinks the railroad was negligent for not having proper signals at the fateful crossing. Poor Carmela can’t sleep at night thinking about how Tony must have seen the train coming and suffered terribly before it actually crushed him and his car. Your partner wants you to examine practice materials that deal with establishing a wrongful death claim that includes recovery based upon fear of impending death. This **partner says to look at Causes of Action.** What did you find?

On Westlaw type in Causes of Action and select the database from the dropdown menu. You can run a search such as: ti((fear apprehension) /5 impending /3 death) or a natural language search such as: fear of impending death. The relevant article is: Cause of Action for Damages for Apprehension of Impending Death, 28 Causes of Action 645.

5. Awhile later, there are further complications for the grieving widow Carmela. It seems that the executor of Tony’s estate, Silvio Dante, brought a survival action against the railroad and recovered a substantial sum of money. The senior partner wants to know if Carmela can pursue a wrongful death action in federal court. The partner wants you to research issues of claim preclusion and res judicata under these circumstances. He **instructs you to consult Wright & Miller.** What did you find?

On Westlaw type in Wright and Miller and select Federal Practice and Procedure from the drop down menu. Run a search such as: “wrongful death" /5 survival /8 "claim preclusion.” You could also run a natural language search such as: claim preclusion by survival action in wrongful death claim.
The relevant article is: 18 Fed. Prac. & Proc. Juris. § 4408 Claim Preclusion Illustrated (2d ed.).

Relevant discussion includes: Similar difficulties are encountered by consecutive survival and wrongful death actions. [FN49] Ordinary claim preclusion analysis offers little help. Often different persons are entitled to seek the separate remedies, and different persons may be entitled to the benefits. In some circumstances, as in the Sea-Land case itself, it may not have been possible to join the claim for wrongful death in the first action. The argument for repose can be reduced by adopting a clear rule that puts defendants on notice that a second action for death remains possible. The procedural difficulties cited by the dissenters may indeed suggest that a wrongful death action should be foreclosed. This question seems better addressed as a matter of tort remedies than as a matter of claim preclusion. [FN50]


Equally difficult problems arise if a single person is entitled to bring and to benefit from two or more wrongful death actions arising out of a single occurrence. See Forrester v. Southern Ry., D.C.Ga.1967, 268 F. Supp. 194, 196–197, applying state law that recognizes separate causes of action for the death of the plaintiff’s wife and son.

6. Now another partner has reviewed the information you found in Wright & Miller and she now insists that you consult what she believes to be a far superior practice guide, Moore’s Federal Practice. What did you find?

Moore’s Federal Practice is available only on Lexis Advance. In the search box type in Moore’s Federal Practice and select the database in the drop down. Run a search such as: claim preclusion by survival action in wrongful death claim.

A relevant article is: Death Action Claim preclusion effect of executor’s or administrator’s actions as representative of beneficiary 131.40[3][e][v][B]

Note: Some of you used Moore’s Manual which is an abridged version the full Moore’s Federal Practice; it does not contain the detailed information that is in the full set.

7. A partner in the firm’s office in New Jersey, where Silvio Dante has been appointed executor of Tony’s estate, is looking into the railroad company’s liability insurance coverage as a possible source of recovery for any wrongful death action by Carmela. This partner tells you that there is a New Jersey CLE publication that deals with wrongful
death actions and he wants you to check it to find out if policy limits apply to the combined recovery for a wrongful death action and a survival action or the limits are applied separately for each type of action. You recall from your Advanced Legal Research course that New Jersey CLE materials are available on Bloomberg Law. What did you find?

Type books in the search box. Then click on “Books and Treatises,” and then on New Jersey Institute for Continuing Legal Education.
Next select Practice Guide to Wrongful Death Actions and run a search such as: "wrongful death" w/9 "survival action" w/25 insur!

A review of Part IV—Damages—Subpart A, Nature of Damages provides New Jersey case law citations that show “that because the claims both arise out of the same bodily injury, it would be considered as one claim.”

7. Another partner thinks that a claim should perhaps be made in an Arizona court, but he wants to know if there have been any verdicts rendered in Arizona dealing with accidents at railroad crossings. He says Westlaw has something that lets you search for jury verdicts. What did you find?

On Westlaw go to the State tab, then select Arizona, and then select Jury Verdicts and Settlements. Run a search such as: railroad /5 accident.

There are 8 results listed, but most just tangentially deal with this type of railroad accident and are really more worker comp type claims by railroad employees; so nothing too helpful here.

Run another search such as: railroad /5 cross! In this list of result one deals with improper marking at crossing and might be helpful here.

9. After the railroad accident, a shady funeral home showed up, took Tony’s body, embalmed it and kept it for several weeks before notifying his family. The senior partner is considering an action against the funeral home for unauthorized embalming and detention of a body and intentional infliction of emotional distress. The action will be based upon both a tort and a contract theory of recovery. The partner wants you to
use a state bar publication, the Arizona Attorneys’ Fees Manual. Find the appropriate section of the manual that discusses recovery of attorney fees under ARS § 12-341.01(A) and provide the citation for the section and summarize what it says about recovery of attorney fees in cases where recovery is based upon both tort and contract theories.

As noted in the PowerPoint this is one of the many Arizona Bar publications available on Lexis Advance. The most relevant section is: § 2.6.2 Meaning of “Arising Out of Contract and Actions Based on Tort and Contract Theories.” From the discussion in the text, as usual, it depends on whether the essence of the claim arises out of a contract or the contract issue is tangential.