

Moore v. Regents of the University of California was a landmark Supreme Court of California decision filed on July 9, 1990 which dealt with the issue of property rights in one's own body parts. John Moore underwent treatment for hairy cell leukemia at the UCLA Medical Center under the supervision of Dr. David W. Golde. Moore's cancer was later developed into a cell line that was commercialized. The court ruled that Moore had no right to any share of the profits realized from the commercialization of anything developed from his discarded body parts.

History

John Moore first visited UCLA Medical Center on October 5, 1976, after learning he had leukemia. After hospitalizing Moore and taking blood, bone marrow aspirate, and other bodily fluids, Golde confirmed that diagnosis. All of the defendants, including Golde, were aware that some of the blood products and blood components were of commercial value.

On October 8, 1976, Golde recommended that Moore's spleen be removed. Golde informed Moore that he had reason to fear for his life, and that the proposed splenectomy operation was necessary to slow down the progress of his disease. Based upon Golde's representations, Moore signed a written consent form authorizing the splenectomy. Surgeons at UCLA Medical Center, whom the complaint did not name as defendants, removed Moore's spleen on October 20, 1976. Moore returned to the UCLA Medical Center several times between November 1976 and September 1983. He did so at Golde's direction and based upon representations that such visits were necessary and required for his health and well-being. On each of these visits Golde withdrew additional samples of blood, blood serum, skin, bone marrow aspirate, and sperm. On each occasion Moore traveled to the UCLA Medical Center from his home in Seattle because he had been told that the procedures were to be performed only there and only under Golde's direction. In fact, however, throughout the period of time that Moore was under Golde's care and treatment, the defendants were actively involved in a number of activities which they concealed from Moore. Specifically, defendants were conducting research on Moore's cells and planned to benefit financially by exploiting the cells and their exclusive access to the cells by virtue of Golde's ongoing physician-patient relationship.

Sometime before August 1979, Golde established a cell line from Moore's T-lymphocytes. On January 6, 1983, the Regents applied for a patent on the cell line, listing Golde and Quan as inventors. U.S. Patent 4,438,032 issued on March 20, 1984, naming Golde and Quan as the inventors of the cell line and the Regents as the assignee of the patent. With the Regents' assistance, Golde negotiated agreements for commercial development of the cell line and products to be derived from it. Under an agreement with Genetics Institute, Golde became a paid consultant and acquired the rights to 75,000 shares of common stock. Genetics Institute also agreed to pay Golde and the Regents at least \$330,000 over three years, including a pro-rata share of Golde's salary and fringe benefits, in exchange for exclusive access to the materials and research performed on the cell line and products derived from it. On June 4, 1982, Sandoz was added to the agreement, and compensation payable to Golde and the Regents was increased by \$110,000.

Decision

Moore brought suit against defendants Dr. David W. Golde (Golde), a physician who attended Moore at UCLA Medical Center; the Regents of the University of California (Regents), who own and operate the university; Shirley G. Quan, a researcher employed by the Regents; Genetics Institute, Inc. (Genetics Institute); and Sandoz Pharmaceuticals Corporation and related entities (collectively Sandoz).

The court found that Moore had no *property* rights to his discarded cells or any profits made from them. However, the court concluded that the research physician did have an obligation to reveal his financial interest in the materials harvested from Mr. Moore, and that Mr. Moore would be allowed to bring a claim for any injury that he sustained as a result of the physician's failure to disclose those circumstances.

The opinion written by Justice Edward Panelli was joined by three of the seven judges of the Supreme Court of California.

The opinion first looked at Moore's claim of a property interest under existing law. The court first rejected the argument that a person has an absolute right to the unique products of their body because his products were not unique. ("[the cells are] no more unique to Moore than the chemical formula for hemoglobin"). The court then rejected the argument that his spleen should be protected as property in order to protect Moore's privacy and dignity. The court held these interest were already protected by informed consent. The court noted laws that required the destruction of human organs as some indication that legislature had intended to prevent patients from possessing their extracted organs. Finally, the property at issue may not have been Moore's cells but the cell line created from the Moore's cells.

The court then looked at the policy behind having Moore's cells considered property. Because conversion of property is a strict liability tort, the court feared that extending property rights to include organs would have a chilling effect on medical research. Laboratories doing research receive a large volume of medical samples and could not be expected to know or discover whether somewhere down the line their samples were illegally converted. Furthermore, Moore's interest in his bodily integrity and privacy are protected by the requirement of informed consent (which must also inform about economic interests).

Justice Arabian wrote a concurring opinion stating that the deep philosophical, moral and religious issues that are presented by this case could not be decided by the court.

Justice Broussard concurred in part and dissented in part.

Justice Mosk dissented stating that Moore could have been denied some property right and given others. Mosk would hold that at the very least Moore had had the "right to do with his own tissue what the defendants did with it." That is, as soon as the tissue was removed Moore at least had the right to choose to sell it to a laboratory or have it destroyed. Thus there would be no necessity to hold labs strictly liable for conversion when property rights can be broken up to allow Moore to extract a significant portion of the economic value created by his tissue. Furthermore, in order to prove damages

from informed consent Moore must prove both that he would not have consented to the procedure had he been properly informed and that a reasonable person would not have consented to the procedure if they had been properly informed. Thus Moore's chances of proving damages through informed consent are slim. Also Moore could not consent to the procedure but reserve the right to sell his organ. Finally, Moore can only sue his Doctor and nobody else for failing to adequately inform him. Thus Moore is unlikely to win, could not extract the economic value of his tissue even if he refused consent, and could not sue the parties that might be culpable for exploiting him.