

MONTEREY COLLEGE OF LAW

Civil Procedure

Final Examination

Spring 2016

Prof. S. Sanders

INSTRUCTIONS:

There are three (3) questions in this examination.

You will be given three (3) hours to complete the examination.

Factual Scenario for Questions 1, 2, and 3

Pam and John, a childless couple, resided in Pam's condominium in St. Louis, Missouri ("MO") which Pam had purchased long before Pam and John began their relationship. Pam's condo was located in downtown St. Louis, MO, Pam's hometown, a city Pam loved because of its vibrant cultural activities.

In 2015, Pam and John, because they were unable to conceive a child, contracted with the Artemis Corporation (hereafter "Artemis") to enlist Artemis' assistance with producing a child. Artemis agreed to harvest Pam's eggs, fertilize them with John's sperm, and freeze them for later implantation to increase the odds of Pam and John becoming parents. Over a period of months, Artemis, in its St. Louis, MO clinic, had collected and frozen a dozen fertilized eggs from the couple which according to the contract would be implanted.

Artemis is a corporation incorporated in the State of Delaware ("DE") with fertility clinics in several Midwestern states. Artemis had a large corporate office in East St. Louis, Illinois ("IL") where billing and personnel functions were handled. Artemis had a slightly smaller corporate office in Columbus, Ohio ("OH") where fertility research activities were conducted. Corporate officers had offices in both facilities and spent about the same amount of time at both locations.

To improve corporate efficiency, Artemis had begun constructing a new facility in St. Louis, MO, that would be large enough to combine the East St. Louis, IL operations and the Columbus, OH, operations at one location in Missouri. When the new Missouri facility was completed, both the Illinois and Ohio facilities would be closed.

In early 2016, only the offices of Artemis' officers were completed. This was fortunate for Artemis President Dr. Sue Smith who was spending almost 75% percent of her time in the new Missouri site, overseeing the construction of the Missouri facility.

At about the same time in early 2016, Pam and John split up when John discovered Pam was romantically involved with Ruth on the side. John left Pam and Missouri, moving to California. Pam began residing fulltime with Ruth in Ruth's farmhouse just outside of Paducah, Kentucky ("KY") about 2 and ½ hours from St. Louis, MO. Although Pam dearly loved her condo in St. Louis, MO, and spent many weekend getaways there with Ruth, Pam had begun to really enjoy life on the farm in rural Kentucky with Ruth. Pam and Ruth wanted a large family and Pam could envision their future children playing in the great outdoors.

Factual Scenario for Questions 1, 2, and 3 continued

Although Pam was uncertain where to raise her future children, Pam was certain that she was ready to start a family. She and Ruth presented themselves to the Artemis clinic in St. Louis to begin the process of implanting Pam's fertilized eggs in both Pam and Ruth. Artemis refused to commence the procedure. Both Pam and Artemis claimed their contract supported their respective positions.

For many reasons, Artemis' refusal disturbed Pam. Not the least of Pam's concerns was her belief that it would cost Ruth and her an additional \$100,000 to begin anew the procedures necessary to produce a family.

Pam filed suit in Missouri State Court seeking an injunction requiring Artemis to implant the fertilized eggs in her and Ruth. Artemis timely answered the complaint and filed a counterclaim against Pam for \$60,000 that Artemis claimed Pam owed for the extraction, fertilization and storage of the frozen eggs. Artemis did *not* seek the additional \$30,000 that Pam and John agreed in their contract to pay for the implantation medical services. Artemis also sought to remove the case to Federal District Court in Missouri.

Question 1

As stated, concurrently with filing its answer and counterclaim, Artemis timely filed a motion to remove the case to Federal District Court in Missouri. In federal court, Pam sought to remand the case back to state court, claiming that the federal court had no subject matter jurisdiction to hear the claim and that the removal statute prohibited removal of the case to federal district court. How should the federal court rule? Discuss fully.

Question 2

For purposes of the following question, assume that the federal district court ruled that removal to the federal court was appropriate. Assume also that Pam filed a motion to dismiss the counter claim based on the lack of subject matter jurisdiction. Artemis consequently claims the counterclaim is a compulsory counterclaim. How should the federal court rule as to Pam's motion?

Note: You may incorporate by reference any analysis you specified in Question 1. Be sure however to restate any conclusion reached in Question 1 if you rely upon that conclusion for the discussion in this question.

Question 3

Again, for purposes of the following questions, assume that the federal district court ruled whether rightly or wrongly that removal to the federal court was appropriate.

- (a) In its answer, Artemis made a demand for a jury trial. Pam made a motion to strike the demand for a jury trial. How should the federal court rule?
- (b) During the discovery phase of the case, Pam seeks to discover the persons who had sought fertility treatment from Artemis in all of its Midwest clinics. Artemis opposes providing the information sought by Pam and files a motion for a protective order. Pam and Artemis meet and confer in good faith but are unable to resolve the dispute. Discuss how the federal trial court should rule. Be sure to discuss the various options the court may consider in deciding the motion.

Answer to Q1

Federal Court Removal/Subject Matter Jurisdiction Question Analysis

I. Removal-FRCP1441/1446

A. Rule: Any civil action brought in state court over which federal court has original jurisdiction may be removed-Does federal court have s-m juris?

1. Federal question? No
2. Diversity of citizenship?
 - a. Complete diversity?

i. Pam

(A) Rule

- (1) Physical presence
- (2) Intent to remain indefinitely

(B) Originally-MO

(C) At time of suit-residing in KY

- (1) Physical presence in KY v. constructive physical presence in MO
- (2) Intent-discuss love of St. Louis, getaways v. beginning to like KY outdoors and see kids playing in woods

Conclude: Probably MO

ii. Artemis

(A) Rule: 2-State of incorp & PPB

(B) State of incorporation-DE

(C) Principal Place of Business

- (1) IL v. OH-Discuss/conclude
-About ½ time in each
-Larger facility
-Research v. personnel and billing
- (2) New MO facility? Not operational but prez is there 75% of time/ other officers not!

Conclude: If MO, maybe no diversity of citizenship (depends on Pam analysis)

b. Amount in controversy

i. Rule=Based on P's claim, if made in good faith, over \$75K unless it appears to a legal certainty the claim's value is less

ii. Injunctive relief-Depends

(A) Plaintiff's view: \$100K - satisfied

(B) Person seeking fed juris: \$30K- not satisfied

(C) Either view- satisfied

B. In state defendant may not remove- So if Artemis is MO citizen cannot
remove

Conclude

Blue Book

NAME

SUBJECT Civil Procedure

INSTRUCTOR Sanders

EXAM SEAT NO.

SECTION

(1)

DATE April 26, 2016

GRADE

Q1

80

Pam v. Artemis

P filed suit against A in Missouri State court seeking an injunction. A answered P's complaint and filed a counterclaim. Then, A filed a motion to remove their claims to Federal District court in Missouri.

Unlike state court, federal court is a system of limited jurisdiction. A claim is only proper in federal court if there is valid subject matter jurisdiction (SMS). P claims the district court lacks SMS and sought to remove back to state court. The court must look at every claim to determine if there is valid subject SMS.

SMS

A claim has valid SMS if the claim deals with a federal question or if there is diversity of citizenship. In order for SMS to be proper, each and every claim must have valid SMS, including joinder of claims. If a claim fails to satisfy FQ or diversity, then a claim may still be heard in federal court if it meets the requirements of supplemental jurisdiction.

Here, the claims include P's claim against A for an injunction, and A's ~~to~~ counterclaim against P for monetary damages

only if claim is
properly joined
the counterclaim
claim of P against A

Federal Question

A claim deals with a FQ when the PLF's rights arise under federal law. This means P's claim exists because of the existence of the federal law. The well-pleaded complaint rule requires the judge to determine FQ by looking only at what the PLF pleads in their complaint, and ignoring any anticipatory defenses.

Here, both P's claim and A's counter-claim arise under their contract from 2015. This contract is not federal law, so FQ is not met for either claim.

The claims are only proper in fed court if they satisfy diversity.

Diversity of citizenship

To satisfy diversity, there must be complete diversity and an amount in controversy that exceeds \$75,000.

For complete diversity, every PLF must be a resident of a different state than every DEF. When determining residency, the court looks at where the parties are domiciled. If there ~~is~~ is a question of domicile because parties moved, the court takes a "snapshot" of the residences at the time the complaint was filed. A party is domiciled where they are physically present, and have an intent to remain indefinitely.

~~For P, she was~~

When married to J, and at the time the contract was entered in to, P resided in Missouri. However, after the split in early 2016, P resided full time w/ Ruth in KY.

Then, P filed the complaint against A. P at this time, was physically present in KY ~~and~~ b/c she resided full time w/ Ruth. P said she could envision raising children at that farmhouse, so this will likely be considered an intent to remain indefinitely.

However, b/c the facts state P was uncertain, then ^{court} they may determine intent to remain is not satisfied. If this is the case, then P's original domicile will be in effect. P originally resided in MO, and without manifesting an intent to remain anywhere else, would be P's domicile.

Therefore, P's domicile is either KY or MO, depending on what the court concludes. However, b/c of the uncertainty, the court will likely conclude P is domiciled in MO.

Next, A is a corporation. A corporation is domiciled in two states: the state where incorporated and their principle place of business.

A is incorporated in DE, so this is their first domicile. #

For PPS, the court determines this by looking at the "nerve center," or where the managers

direct and control the every day operations.

Here, A has a clinic in MO, but A does not conduct managerial duties in the clinic, ~~she~~
~~she would not be the PPB~~

A has a corporate office in IL, where billing and personnel functions ~~was~~ are handled. Then, fertility research is done at a corporate office in OH.

However, A sought to close these ~~two~~ offices and open a joint office in MO. When complete, the MO office would be the PPB, b/c billing, personnel, and research will be done there.

But at the time of the complaint, the office in MO was not complete, and only officers were present in MO. The president spent 75% of her time in MO.

Before the MO office, IL would have been the PPB because billing and personnel is directing and controlling the operations.

However, MO ~~is~~ will likely be A's new PPB b/c the President spends ~~in~~ a majority of her time working there. But the facts indicate President was overseeing construction, but does not indicate that she was directing and controlling the management operations.

B/c the MO office is not complete, the IL + OH offices are still open. Therefore, taking a snapshot of when the complaint was filed,

IL would be A's PFB, b/c it is bigger than OH and offices deal with billing and personnel functions, which are directing and controlling the corporation's operations.

Therefore, P is domicile in MO and A is domicile in IL and DE.

Complete diversity of citizenship is satisfied.

Next, the court must look at amount in controversy. When dealing with injunctions, the way to compute the amount varies depending on jurisdiction. Some jurisdictions look at what the P stands to gain, some determine what the D stands to lose, and lastly some jurisdictions look at it from the point of view of the party asserting federal jurisdiction.

Here, there ^{is one} ~~are three~~ claims ^{between the PLF} ~~between the~~ and DEF. ^{PS only claim is for the injunction.} ~~is one claim against one DEF, the court may not aggregate the claims.~~

The facts state P asserted a denial of the injunction would cost her \$100,000. A's counter-claim seeks \$60,000, the amount P owed under part of the k, but did not seek [↑] \$30,000 amount also in the contract.

~~Though P wouldn't be losing \$100,000.~~

The denial of the injunction would exceed \$75,000, and thus meet the amount in controversy. Though P would not gain \$100,000, it is the amount at stake

and the court may decide that is enough to satisfy amount in controversy; ~~Also, P would essentially be gaining~~ because P would be gaining the injunction/enforcement of the k and of the procedure, which is worth \$100,000.

For A's ^{loss} claim, he would lose \$30,000 by not seeking payment for implantation services. Then, P would lose \$60,000 if A's claim prevails.

~~By applying the rule that the amount in controversy is determined by the value of the thing sought, the court would find that the amount in controversy is \$100,000.~~

~~The fact that P's claim and A's claim are outside of the scope of the dispute does not mean that the amount in controversy is \$100,000.~~

A would not stand to lose \$100,000. So if it is in a jurisdiction that looks at the P's ^{only} loss, this would ~~fail to~~ meet amount in controversy ~~because~~ if the enforcement of the injunction would result in D losing ^{over} \$75,000.

The facts do state D would lose \$30,000 by P not paying for medical services, which is less than \$75,000.

The court will likely look to how much the injunction is worth, which is \$100,000.

So if in a jurisdiction where the court looks at the PLF, ~~at the party's~~ then amount in controversy is ~~not~~ satisfied.

If the court looks at it from the DEF's perspective or from the party asserting federal jurisdiction (which is the DEF here) then the court will conclude diversity is not met. The facts do not indicate A stands to lose an amount that exceeds \$75,000.

Answer to Q2

(a) Challenge to Counterclaim

I. May Artemis assert a counterclaim?

Yes, Rule 13(b) provides for the assertion of any claim against a party, but there must be independent subject matter jurisdiction for the claim

II. Is there independent s-m jurisdiction?

A. Federal question? No, state law c/a.

B. Diversity of citizenship?

- i. Diversity of citizenship? Maybe; see discussion in Question 1
- ii. Amount in controversy? >\$75K? No, \$60K

III. Compulsory Counterclaim? A party must assert a counterclaim against a party if

A. Arises out of the same transaction or occurrence, and

1. 4 tests

- a. Are the issues of fact and law raised by the claim and counterclaim largely the same?
- b. Would res judicata bar a subsequent suit on defendant's claim absent the compulsory counterclaim rule?
- c. Will substantially the same evidence support or refute the claim and counterclaim?
- d. Is there any logical relationship between the claim and counterclaim?

2. Supplemental jurisdiction-1367 test of "same case or controversy" test will likely be satisfied if Rule 13(a) if same operative facts"

B. Will not require the joinder of a party over whom the court cannot acquire jurisdiction-In personam discussion re Mo court having jurisdiction over Pam

MO federal court will have Court in personam over Pam since she consented to MO jurisdiction by filing the action in MO; anyway ,Pam may be MO citizen and m/c under *I-Shoe* ?

Property

K entered into in MO

Medical services provided in MO

Blue Book

NAME

SUBJECT

Civil Procedure

INSTRUCTOR

Sanders

EXAM SEAT NO.

SECTION

02

DATE

April 26, 2014

GRADE

Q2

80

Pam v. Artemis

P filed a suit against A for an injunction. A filed a counter-claim against P for damages.

Because the court ruled P's claim against A had valid subject matter jurisdiction, the court must next determine if A's counter claim has valid SMS. Because the federal court is a system of limited jurisdiction, every single claim must satisfy the requirements of SMS, including counter-claims.

P contends the counter-claim lacks SMS. The court must decide this motion by first determining whether A's counter-claim is compulsory, and then by determining whether the counter claim can supplementally come in under A's valid SMS.

Joinder of claims

The courts want to promote efficiency and save court costs. Therefore, the FRC allows parties to join claims to already filed + pending actions. ~~There are two types of joinder of claims: compulsory and~~

Here, P sued A first. Next, A filed a claim against P. B/c A, the def, is already a party and brought the claim against P, also already a party, the joinder is a counter-claim.

There are two types of counter-claims: compulsory and permissive.

A compulsory counter-claim is a claim by the DEF against the PLF over a matter dealing with the same transaction or occurrence, meaning the same set of facts that will likely use the same evidence. The claim is called compulsory because it is required. If a DEF ^{fails to} bring a compulsory counter-claim ^{during the PLF's claim}, they waive their right to that claim forever.

A permissive counter-claim is also the DEF bringing an action against the PLF, but the claim is a different transaction or occurrence than PLF's claim, and is not waived if not joined.

Here, P's claim is an injunction to enforce a K between A + P. The K was for assistance in producing a child. A refused to commence the fertilization procedure, and P wants an injunction to require A to implement the fertilized egg.

A's counter-claim is for \$60,000 in damages, which A claims is the cost P owes for extracting, fertilizing, and storing the eggs.

A will argue these two claims deal with the same transaction and occurrence. Both claims deal with the performance of their contract: P being fertilized, A being paid for the services required for fertilizing P.

P will argue b/c her claim deals with an injunction, equitable relief, and A's claim deals with ~~mon~~ damages, legal relief, then they are different transactions and occurrences.

However, the court will likely conclude A's claim is a compulsory counter-claim because both claims deal with the same contract.

Both claims will deal w/ the fertilization process A conducted, the amount of money and time it took, ^{and} why A refused to commence the procedure, Also, both parties contended the contract supported their positions. The court will conclude it make sense to litigate the issues ~~over one~~ and interpretations of one contract in one litigation. And because it is the same transaction and occurrence, A's claim is a compulsory counter claim.

Because A's claim is a compulsory counter claim, A rightfully asserted the claim in this action. If he didn't, he would have waived all rights to the claim.

Also, because it is compulsory, A's claim cannot be permissive, since permissive is based on a different T/O.

Subject Matter Jurisdiction

The court concluded P's claim has valid SMS. P's claim satisfied the diversity of citizenship element of SMS, meaning P + A have complete diversity, in that they are residents of different states, and P's claim for injunctive relieve exceeds the \$75,000 amount in controversy requirement, b/c the injunction is worth \$100,000.

Every claim ~~must~~ that is heard in federal court must have valid SMS. A claim has valid SMS by ~~at~~ meeting federal question or diversity.

Therefore, A's ~~claim~~ compulsory counter claim may only be heard in federal court if it meets SMS. ~~If it fails to meet SMS, the court would be most likely grant~~

As stated in question 1, P + A's claim arises under their state law contract, not federal law. So A's counter-claim fails to satisfy F.Q.

P + A have complete diversity, because P is domiciled in MO and A is domiciled in DE and IL.

Then, A's counter-claim must have an amount in controversy that exceeds \$75,000. A is asking for money damages, not an injunction like P is asking for.

A's damages amount to \$60,000, the amount he contends P owes him under their contract. A did not ask for the additional \$30,000 for medical services.

Therefore, A's claim does not exceed ~~\$60,000~~ \$75,000. A cannot aggregate his compulsory counter-claim w/ P's injunction.

~~Therefore~~

A's compulsory counter-claim fails to satisfy diversity. His claim can only come in to federal court under P's claim ^{with valid SMS} if the court finds A's claim meets supplemental jurisdiction.

Supplemental Jurisdiction

When a claim fails to meet the requirements of FQ or diversity, the FRE allows a claim to ~~have valid SMS~~ ^{to fed court} come in with a claim that does meet diversity or FQ, if the elements are satisfied. Here, P's claim has valid SMS.

1367a

First, the court looks at whether the claim lacking SMS is based on the same nucleus of operable facts as the claim that has SMS. Claims will typically have the same nucleus of operable fact when they are based on

the same transaction or occurrence, b/c the same facts and evidence apply to both claims.

B/c the court will conclude A's counter-claim is compulsory, and thus based on the same transaction or occurrence, the court will also conclude A and P's claim are the same nucleus of operative fact. Compulsory counter-claims always satisfy 13c7a.

Therefore, 13c7a grants SS over A's compulsory counter-claim to come into Fed court w/ A's valid SMT claim.

13c7b

Next, the court must determine whether the rules of 13c7b takes away Supplemental jurisdiction that is granted under 13c7a.

Under 13c7b, it only applies in diversity cases. As P's claim has valid SMT because of diversity, 13c7b applies.

13c7b takes away SS from claims by the P that deal with joinder and indispensable parties. The courts do not want PLEs to be able to use SS to get around diversity requirements.

Here, A is the DEF in the claim, and his claim is a compulsory counter-claim. As 13c7b only takes away claims by the P, 13c7b does not apply.

Therefore, 1367a grants SJ, and 1367b does not take away the SJ granted to A's compulsory counter-claim.

So A will have valid SJ for his claim unless the court decides to implement 1367c.

1367c

When a claim would otherwise have valid SJ, the court has the discretion to deny to hear the claim if the state claim predominates over the claim with valid SJ, if the state claim deals with a novel or complex law that the state court should interpret, or any other reason the court deems fit.

Here, A's SJ claim is worth \$100,000 while the injunction is worth \$1,000,000. So A's claim does not predominate. \checkmark

Next, the claim is based on A+P's contract, and the facts do not indicate a novel or complex state law at play.

The court will therefore not decide to deny to hear A's claim. Because the claim is a compulsory counter-claim, the court will rule that there is a high interest in litigating ~~the~~ A's claim with P's claim.

In conclusion, A's claim has valid SJ, and can therefore meet the requirements of SJ and be heard with P's injunction claim.

The federal court should deny P's motion to dismiss and allow A to join ~~but~~ the compulsory counter-claim.

Answer to Q3

(a) **Right to jury trial?- Beacon Theater type of problem**

- I. General rule is that injunctive relief (equitable action) is to be decided by a judge. No right to a jury
- II. *Beacon Theaters* exception. Where a counterclaim seeking legal relief is properly included in the action, must try the counterclaim before a jury (right to jury trial) first. Judge is bound by jury's decision as to any common issues of fact.(collateral estoppel)

(b) **Discovery**

- I. Scope of discovery
 - A. Rule: FRCP 26(b)
 1. Any nonprivileged matter- No, not seeking communication
 2. That is relevant to any party's claim or defense-did others suffer a refusal by Artemis for implantation.
 3. That is reasonably calculated to lead to admissible evidence-yes
 - B. Expansion of scope: if good cause, relevant to subject matter-Not applicable
- II. Protective order-FRCP 26(c)
 - A. Standard to be entitled to a protective order: Protect a person or party from:
 1. Annoyance
 2. Embarrassment-Subject patients to possible embarrassment re reproductive capacity
 3. Oppression-Subject patients and their children to possible prejudice
 4. Undue burden or expense
 - B. Prerequisites
 1. Meet and confer: yes
 2. In good faith-yes
 3. Attempting to resolve without court action.
 - C. Nature of protective order
 1. Forbidding disclosure or discovery- Proably not; highly probative
 2. Imposing restrictions
 - a. Specifying terms, including time and place for disclosure
 - How many patients fall within criteria?
 - Random sample
 - Survey re status, denial of implantation
 - Limit access to info disclosed
 - Restrict dissemination
 - b. Prescribing a discovery method other than the one selected by the party seeking discovery-N/A
 - c. Forbidding discovery into certain matters or limiting the scope
 - d. Designating persons who may be present-N/A
 - e. Sealing deposition and opening only on court order-N/A

- f. Allowing revelation of trade secrets or other confidential commercial research in a specified manner-N/A
- g. Requiring parties to simultaneous disclose in a sealed envelope-N/A
- h. On any just terms the court may direct-In camera review of info before disclosure

Blue Book

NAME

[REDACTED] 7

SUBJECT

Civil Procedure

INSTRUCTOR

Sanders

EXAM SEAT NO

SECTION

Q3

DATE

April 26, 2014

GRADE

10^{7/8} x 8^{1/4}

25 - 24 PAGE

Q3

Pam v Artemis | Artemis v. Pam

P sued A for an injunction to enforce AS performance under their ts, which would require A to commence PS fertilization. A filed a counter-claim against P for damages. The claims are both validly in the federal district court of Missouri.

A. Right to a Jury

The 7th amendment preserves the right to a jury trial, it does not create the right.

A filed a ~~motion~~ demand for a jury trial. In determining the demand's merit, the court must first examine the historical background.

Because the 7th A preserves the right, the court, under common law, looks at the cause of actions, and determines if they would have had a jury prior to 1791, when the 7thA was enacted.

In 1791, there was a court house that dealt with matters of law, and a court house that dealt with matters of equity. Matters of law had a jury, while matters of equity did not.

If the cause of action existed prior to 1791, the court looks at which court house it was tried. If the cause of action did not exist, the parties will determine an analogous one.

Here, P's cause of action is for an injunction to get A to fertilize her. The fertilization process did not exist prior to 1791, but P's claim stems from ~~that~~ P + A's contract, which A is in breach of by not performing his end (allegedly - held at trial). Breach of contract issues existed prior to 1791, and injunctions to get a party to perform existed. ✓

Equitable actions asking for specific performance and an injunction had no jury right prior to 1791.

Therefore, P's claim is equitable.

A's claim is for damages based on A + P's contract. As stated, breach of contract was a case of action that existed prior to 1791. But unlike P, A is asking for money damages. Money damages under a contract are matters of law, and are entitled to a jury.

Because P is asking for an injunction and A is asking for money, both law and equity issues are at play.

The old rule was an all or nothing mentality where the court looked at which claim predominated, and the entire claim would be heard ~~to~~ with the predominating court. (ie: either all claims w/ jury or all claims w/ no jury).

Under Beacon, the court ~~used to~~ ~~look at the~~ ~~predominant~~ now looks at the claims issue by issue.

Here, issue one is P's injunction, and issue two is A's money damages.

The court ~~decide~~ must try the jury issues first. So here, the issue of A's damages is a matter of law, so A is entitled to a jury. P's injunction is equitable, so P does not get a jury.

Therefore, A's damages issue is tried first, then the court will decide to grant or deny P's motion.

Lastly, Beacon says that when issues of law and fact underlie both law and equity claims, then those issues will be put to the jury.

Here, P + A's factual issues dealing with their claims will overlap, b/c they both deal with the contract.

So if a factual issue is relevant to A's claim for damages and P's claim for an injunction, the court will have the jury determine those overlaps.

In conclusion, P will have a judge determine the injunction, and A will have a jury determine the money damages. Factual overlaps will be put to the jury, and the jury issues will be tried first.

B. Discovery

Each party is entitled to discover facts + evidence to determine the merits of their case. The rules of discovery are designed to limit the chance of surprise at trial, and promote settlements while still preserving the nature of the adversarial system. Discovery is appropriate of all non-privileged information relevant to the claim or defense and is reasonably calculated to lead to admissible evidence.

P is seeking to discover the persons who sought fertility treatment from Artemus in all of its Midwest clinics.

A will argue there are privilege issues, as the information could be private, medical records. However, the Fed court does not recognize the doc/patient privilege. ~~see also the request for discovery~~ ~~the request for discovery~~ If A's corp had specific confidentiality promises, the court could remedy this by limiting discovery (see below). But A could not claim privilege as the docs would not be atty-clint protected or work product.

This request is relevant to the claim + defense because P is seeking fertility treatment from A. If P finds out other people who sought

the same treatment, she could see if A also denied the fertilization process to other women, or if A went through with the process with other women. P would discover potential reasons why A denied to complete treatment, or why A went through with it with other women but not her.

This info would lead to discoverable info because P could depose the people who she finds and get produce their ^{med.} documents ~~to her~~. Depositions are proper to non parties with notice, so P could get the testimony of other women.

Therefore, P's request is a valid discovery request.

Protective Order

When a responding party feels as though the propounding party's request is burdensome, designed to harass, delay, or embarrass the parties, then the party can file for a protective order.

First, the parties when a discovery dispute arises, must meet & confer in good faith. The facts indicate they did this but failed to come to a solution.

Then, a protective order can prohibit or limit a discovery request.

Here, A will likely argue the request is burdensome b/c it is broad and they would have to do a lot of digging through all their files. The facts indicate A has clinics in several midwestern states, so it will take a long time to go through all of their clinics.

Also, b/c the corp deals with fertility, A will argue the identities and info of their clients ~~is~~ should remain confidential and not be publicized. Fertility issues is a highly personal and sensitive issue that should not be subject to publicity.

The court may have P amended her request to be more specific. Such as narrowing the ~~is~~ pool to ~~the~~ clinics who either A successfully fertilized, or who A denied fertilization, like they did to P.

However, A might still argue this is burdensome b/c there are many files to go through, but the court will conclude the probative value of seeing A's treatment to other fertility clients will give insight into the court deciding on the injunctive issue.

Next, if there are confidentiality issues, the court can review the documents and IDs if the docs are confidential pursuant to a protective order.

This would protect the woman's sensitive info from being published, while still allowing P to discover relevant info.

If there is still an issue to the level of sensitivity of the info, the court can conduct an in camera review of the documents and decide what info should be redacted, and if any of the info is in fact relevant.