MONTEREY COLLEGE OF LAW

Civil Procedure

Final Examination

Spring 2018

Prof. B. Cooper

INSTRUCTIONS:

There are three (3) questions in this examination.
You will be given three (3) hours to complete the examination.

Answer Outline - Not Available

CIVIL PROCEDURE EXAM
SPRING 2018
Prof. Cooper [60 minutes]

QUESTION 1

Anton and Betty, a married couple from California, own "Horizons", a small art gallery located in Seaside, California. At an art trade show in Monterey, California, Anton and Betty met artists Chris and Darla, roommates and residents of Key West, Florida, who made intricate sculptures from gem stones which generally sell for $100,000 or more. While at the trade show, Chris and Darla suggested "Horizons" carry three sculptures made by Chris and Darla on consignment in exchange for "Horizons" receiving 10% of the total purchase price.

After a series of conversations over a period of months after the trade show, Horizons, Chris and Darla entered into a contract in which the parties agreed to deposit the sale proceeds from the three consignment sculptures into an escrow account maintained at Big Bank located in California. The contract further mandated that the escrow funds would not be dispersed until all three sculptures were sold at which point a final accounting would be performed by Big Bank and, thereafter, the funds were to be dispersed to "Horizons", Chris and Darla, respectively, per the terms of the contract (i.e., 10% to Horizons, 45% to Chris and 45% to Darla with the 3% escrow fee to Big Bank split on a pro rata basis amongst the three from their respective percentages).

All three sculptures sold within 4 months of arriving at Horizons, and the funds were placed into the escrow account by Horizons as agreed. As it turns out, the gems used in the sculptures were obtained by Chris and Darla from Gems R' Us, a large gemstone wholesaler located in Key West, Florida, pursuant to a contract that required Chris and Darla to pay Gems R' Us 20% of the purchase price of the three sculptures. Anton and Betty were unaware of this prior agreement. Without mentioning the escrow account, Chris told Gems R' Us that "money is kinda tight right now", and that neither he nor Darla were "willing or able" to remit any payment whatsoever to Gems R' Us.

The CEO of Gems R' Us stopped by the local pub on the way home work. He overheard Chris, apparently inebriated, talking loudly to the bartender about how he "got one over" on Gems R' Us and "they can't touch me, I don't have any assets that they know about". As the drinks flowed, Chris loudly told the bartender that his "ship was about to come in" since he was going to "cut Darla out of the deal" so he could "receive 90% of a Big Bank escrow account in California from some overpriced sculptures".

Question 1 continued.....

The CEO immediately notified Big Bank of its claim to 20% of an escrow account believed to be held by Big Bank. On this information, Big Bank intends to file an interpleader action, naming as Defendants Anton and Betty dba "Horizons", Chris, Darla and Gems R' Us. All Defendants will file counterclaims against Big Bank and cross-claims against each other to protect their interests in the escrow funds. Gems R' Us intends to concurrently file a cross-claim for breach of contract against Chris and Darla for failing to remit payment for the gemstones.

1. Provide a thorough analysis as to whether Big Bank's intended interpleader action may be brought under Rule Interpleader, Statutory Interpleader or both, bearing in mind amount in controversy, jurisdiction and venue considerations.

2. The day before Big Bank filed its interpleader action, Darla left for a two (2) year trip to India to study with a yoga master. Prior to leaving she sold all of her belongings and deleted her social media accounts. Upon leaving, she told Chris she "may or may not" return to Key West. Provide a thorough analysis as to whether the interpleader action should proceed in Darla's absence pursuant to FRCP 19.

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Prof. Cooper [60 minutes]

QUESTION 2

In 2014 Grady, a world-class rock climber, underwent an operation performed on his left shoulder by Dr. Meline. Dr. Meline expected Grady to make a complete recovery in 10 to 14 months which, if true, would allow Grady to continue his training for the Climbing World Championships scheduled 18 months after the shoulder surgery. The surgery involved the installation of a cadaver tendon into Grady's shoulder selected by Dr. Meline from five (5) other available donor tendons. Prior to installation, the cadaver tendon was treated with a special liquid protein substance, designed to promote tendon attachment, invented and patented by Dr. Meline in 2005.

Unfortunately, Grady's recovery did not progress as expected because he was allergic to the liquid protein invented by Dr. Meline causing his body to reject the cadaver tendon. After fourteen (14) months, Grady consulted with two other surgeons, Dr. A and Dr. B, both of whom recommended removal of the cadaver tendon and installation of a synthetic tendon. Grady immediately underwent the recommended surgery with Dr. B which was successful after a long recovery period. Nine (9) days after surgery, Grady filed suit for medical malpractice against Dr. Meline in Federal court based on allegations that Dr. Meline had failed to test Grady for an allergic reaction to the liquid protein prior to surgery resulting in the rejection of the tendon thereby necessitating a second surgery. Grady sought $4 million in lost earnings and sponsorship opportunities due to his prolonged absence from competitive climbing.

While Grady was recovering from surgery with Dr. B, Grady's attorney, Dil I. Gent, Esq. performed media research regarding the liquid protein. He learned that Dr. Grady had been sued by three (3) other elite athletes for professional negligence due to allergic reactions to the liquid protein relating to surgeries performed in 2009, 2010 and 2011, respectively. These three (3) lawsuits, brought in California state court, were consolidated for jury trial purposes. After extensive expert testimony, in 2013 the jury found that: 1) the liquid protein caused an allergic reaction in 34% of the general population; 2) the liquid protein caused an allergic reaction in 52% of elite athletes due to their low levels of body fat as compared to the general population; 3) Dr. Grady Meline was aware of this information in 2005; and 4) given this, Dr. Grady Meline was liable for professional negligence for failing to test the three (3) Plaintiffs for allergic reaction prior to performing surgery.

Question 2 continued.....

During discovery in 2014, Grady's attorney timely propounded Request for Admissions to Dr. Meline asking Dr. Meline to admit, amongst other things, that: 1) Dr. Meline had made no changes to the liquid protein since obtaining the patent in 2005; and 2) Dr. Meline did not test Grady for a possible allergic reaction to the protein prior to Grady's surgery. Dil I. Gent also propounded a Request for Production of Documents which included individually numbered requests for the ingredients, the process for production of the liquid protein and all data obtained during the testing and development of the liquid protein. Dr. Meline failed to answer the two (2) above request for admissions. In a teleconference, Dr. Meline's attorney told Dil I Gent, Esq. that the doctor could not recall whether any changes had been made the protein formula which was made at Risky Labs, Inc., and further could not recall whether he tested Grady for an allergic reaction prior to Grady's surgery.

Dr. Meline similarly failed to produce any documents relating to the ingredients and process for production documents on the grounds that the same would constitute the disclosure of protected intellectual property. Grady brought a Motion to Compel regarding the Request for Production of Documents which was granted. With respect to the liability portion of his claims, Grady intends to bring a FRCP 56 Motion.

1. Provide a short explanation, with citation to appropriate Federal authority, as to why Grady did not undertake any efforts, formally or informally, to compel responses to the Request for Admissions?

2. Provide a short explanation, with citation to appropriate Federal authority, as to how the Court should address Dr. Meline's intellectual property regarding the liquid protein in its Order on the motion to Compel.

3. Will Grady successfully assert any preclusion arguments in support of his FRCP 56 motion?

4. If the Court denies Grady's FRCP 56 Motion, how may he challenge the Court's Order?

CIVIL PROCEDURE EXAM
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QUESTION 3

James, a retired accountant, owns "Glennis", a mid-sized fishing boat which he stores in a slip at a local marina as he has over the past 20 years. James takes "Glennis" out twelve (12) times per year on average, and donates 50% of his catch to a local charity that provides daily meals and social interactions for the elderly and disabled. He is friendly with the Hank, the long-time Harbor Master, as well as with the marina staff, all of whom are aware that James suffers from peripheral neuropathy (i.e., numbness and occasional loss of sensation) in his arms and hands, particularly on cold days.

In February, as James was entering the marina on his return from a fishing trip, he saw a small boat owned by the marina and operated by the marina security guard, Howell, zig-zagging back and forth across the marina channel. As the two vessels approached each other, Howell made a sudden turn towards "Glennis". In response, James steered "Glennis" left, away from the sailboat and towards the marina dredge (a large floating underwater vacuum of sorts, essential to keep the marina channel open during the winter by sucking sand deposits from the bottom of the marina channel and pumping the sand back out into the Bay). This maneuver avoided a collision between the two boats but resulted in "Glennis" striking the new $8,000,000.00 large dredge (i.e., 85 feet long, 30 feet wide) owned by the marina.

The collision caused moderate damage to "Glennis", estimated at $30,000.00, and significant damage to the dredge, in excess of $300,000.00, rendering the dredge inoperable for a month to facilitate repairs. Unfortunately, this meant that the marina channel was closed for the month resulting in a significant marina revenue loss in excess of $80,000.00.

One week after the accident, James filed a lawsuit in Federal Court against the marina for negligence, and the marina promptly filed its Answer to Complaint. The lawsuit is a standard diversity action and, having researched the issue, James' counsel discovered that none of the Federal rules regarding maritime actions apply in this case.

Willie, a local fisherman who observed the collision from approximately 50 yards away, claims he saw James "shaking his arms repeatedly in an alternating fashion" in the 90 seconds prior to the collision. Hank maintains that James failed to follow his navigation instructions, issued over marine radio, in the same 90 second period and that if he had, no collision would have occurred. James claims that his radio was on and working properly at all relevant times, and that he heard no instructions whatsoever from Hank.

Question 3 continued.....

With the case now at issue, discovery commenced during which the marina filed a Motion to Compel a Physical Examination of James to secure admissible expert testimony that James suffered from peripheral neuropathy and that the neuropathy was a contributing factor to the collision. The marina also served written interrogatories to James, number 5 of which states: "Identify all instances you have experienced any numbness, tingling or loss of sensation in your upper extremities in the past 10 years". James refused to submit to the physical examination, and refused to answer interrogatory number 5 on privacy and relevance grounds. The marina filed a Motion to Compel Physical Examination and Response to Written Interrogatory No. 5. James' counsel caused to personally serve upon Willie a Notice of Deposition with the time, date and location of the deposition clearly indicated on the Notice.

1. Provide a thorough analysis, with citation to appropriate Federal authority, as to whether or not the Court should grant the marina's Motion to Compel in whole or in part.

2. Immediately upon being served with the Notice of Deposition, Willie hired a lawyer to advise him how to "deal with" the Notice. The lawyer told Willie that he did not need to attend the deposition and that nothing "bad" could happen to Willie if he failed to appear as noticed.

a. Provide a short analysis, with citation to appropriate Federal authority, as to whether or not the lawyer is correct.

b. Willie's lawyer is aware Willie will ultimately be deposed in this matter. With Willie's convenience and finances in mind, provide a short proposal as to how Willie's lawyer should respond to the Notice of Deposition.

3. The attorney from the marina awoke suddenly in the middle of the night, realizing she had made a potentially serious mistake in her handling of the case. With citation to appropriate Federal authority, analyze the mistake made by the marina's counsel and identify any corrective measures she may take in an effort to correct her mistake

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Joinder

FRCP 22

FRCP 1335

FCRP 19

FRCP 14 Int. generally ?.

JOINDERS: any person who may join a party in litigation.

FRCP 22:

In order for the parties to assert FRCP 22, they need to meet the following criteria: 1) complete diversity 2) amount must be 75.01k, with no bond 3)service must be territorial (meaning within the state) 4) there must be venue (1391). Good.

Here, the defendants Anton and Betty are from California. Defendant's Chris and Darla are from Florida and Big Banks is from California. According to FRCP 22, the claimants must have complete diversity. Here, my if Big Banks only named the defendant's from Florida, Chris and Darla they would have satisfied the rule and they could have proceeded to the next step. Because in order for FRCP 22 to work, they would need for the claimants to be diverse, meaning that they needed to be from different places. Therefore, if Big Banks was only doing an FRCP 22, then they would have succeeded. Next we have

Germs R' us and they reside in Florida also, meaning that they are in fact diverse from Big Banks and would satisfy the requirements of complete diversity. But since, Darla and Chris are also from Florida and Anton and Betty are from CA as well as Big Banks, they would defeat complete diversity and therefore Big Banks cannot use rule 22 to bring them in. Here, Big Banks included Anton and Betty who reside in California as well as Gems R'us and Chris and Darla who share the same state, thus destroying the diversity criteria under rule 22.

The second step to satisfy rule 22 Big Banks must make is whether the amount in controversy is more than $75.01k. Here, the amount that is in controversy is more than $75.01k, its actually $100k. The 100k, would satisfy the amount because that would mean that Horizon has now sold the three sculptures. The fact pattern does not indicate who much each sculpture is worth individually, but the total amount for the sculptures is $100k. Therefore, they have satisfied the amount in controversy. Next, would be the bond, under rule 22, there does not need to be a bond. Meaning that there is some money that is being collected. Here, there is a bond amount because each party is getting a certain amount of money back of the 100k. Horizons is entitled to 10%, Chris and Darla have 45% each, 3% escrow fee to Big Bank and 20% to Gems R'us. Now, since Chris and Darla never mentioned anything to Anton and Betty about the extra 20% to Gems R'Us, that would mean that the final money that Anton and Betty would receive is a lot less. But nevertheless, the 20% is already included in the 100k and therefore, the money amount has satisfied the amount in controversy for rule 22, which is $75.01k. Also, by having some sort of bond with the bank since that's where the money is located it will not satisfy that there needs to be no bound required under rule 22. Big Bank has satisfied the amount of $75.01k, but they have not satisfied the bond requirement for rule 22 (which is no bond), therefore, they have only satisfied the second requirement half way.

The third step is that service must be territorial meaning that it must be within the state. Here, the defendants Anton and Betty have been served in the property state, considering that they are within the same state as Big Banks, therefore it satisfies the requirement. But, Chris and Darla are from a different state, but they were not properly served because it has to be within the same state, Florida is not the same as CA. Also, Germs R' Us is also from Florida and they have also not been properly served. Therefore, they do not satisfying this criteria.

Lastly, in order to satisfy rule 22, the venue must be proper as discussed in FRCP 1391, here, there are no venue issues, therefore, venue is proper for all four of the defendants.

CONCLUSION:

In order for Big Banks to bring a proper FRCP 22 action, they would need to meet the criteria, which is complete diversity, money must be more than 75.01k with no bond, service must be territorial and venue must be proper under FRCP 1391. Here, Big Bank cannot introduce rule 22, because they lack the criteria of having complete diversity and the bond issue under the amount in controversy.

FRCP 1335:

For Big Banks to assert under FRCP 1335, they need to meet the following criteria: 1) minimal diversity 2) amount must be $500, with a bond 3)the service has to be nationwide, and 4) the venue is (1397) meaning that it's where any claimant resides.

In order to satisfy the criteria of rule 1335, the parties must have minimal diversity, meaning that at least 2 claimants and they can also be from the same citizenship. Here, Chris and Darla are from Florida and Big Banks is from California, therefore, they have satisfied the rule because they are from different states and they have minimal diversity. Next, we have Anton and Betty and they are located in California and Big Banks is also

from California meaning that if they were the only ones they would have not satisfied the rule because it needs to be minimal diversity, but under rule 1335 is asking for minimal diversity and here, they do have minimal diversity. Also, Gems R'us is from Florida, and therefore they have also met the criteria of the minimal diversity. Because Big Bank is from California and therefore from two different states. Therefore, Big Banks did in fact meet one of the elements of rule 1335.

The next step that Big Banks must prove is the amount in controversy to be more than $500 and that they require a bond. Here, the amount that Horizon has in the account is $100k and 10% goes to them, 45% to Darla, 45% to Chris and 3% to Big Bank and apparently 20% to Gems R'us (since Darla and Chris never told Anton and Betty). But what matters here is that it's more than the $500 minimum requirement, here that is the case because there is 100k that is in the amount. Therefore, they have satisfied the amount. Next, they have to look at if there is a bond, because that is what is required under FRCP 1335. Here, there is a bond because the bank is the holder of the money amount, therefore, they have satisfied the bond requirement. By meeting the two criteria for the amount in controversy, they have satisfied the second party of the 1335.

The third step is that service must be nationwide. Since Big Banks is from CA and Anton and Betty are also from CA, they have been properly serve because they can serve them nationwide. Chris and Darla are from FL and they have also been properly served because of the nationwide service. Gem's R'us has also been properly served because the service is nationwide. Therefore, Big banks has satisfied the criteria.

The last step is that venue must be proper according to FRCP 1397, which states that it's where any claimant resides. Here, venue is proper for all of the defendants because we are not given any facts about it.

2)

FRCP 19: Necessary and indispensable parties

In order for interpleader action to proceed, Big Bank has to meet the criteria under FRCP 19: can relief be granted if: 1) absence of the party is prejudicial? 2) Can prejudice de avoided? 3) Can there be adequate judgment? and 4) can the plaintiff have remedy for the action if it was dismissed by non-joinder? 19b

For the interpleader action against Darla to be proper considering that she is leaving to India to study, big Bank has to meet FRCP 19, which states that if relief can be granted if 1) absence of party is prejudicial? Here, Big bank will not get the relief that they desire for it to not be prejudicial. If Darla leaves it will prejudice the case that she has in pending litigation. Relief will not be granted because she will need to be here, since she is one of the main parties to the action. If she leaves to her India trip it will most likely prejudice big banks case because she is leaving for 2 years and 2 years is a long time for the bank not to have relief. She has sold all of her belongings and deleted her social media and she also made a statement to Chris that she "may or may not be back" here her absence can prejudice the case because it will be in turn of something that will not be good. Therefore, her absence will prejudice the case.

Next, is can prejudice be avoided? Prejudice can be avoided if she would remain here until the pending litigation has been settled and big bank can seek relief. prejudice can be avoided if the litigation would settle quickly or if she can come back to the states until the litigation has been concluded. It's only one of the ways it can be avoided. Therefore, it can be avoided, is she comes back and cuts her trip short.

In order to have adequate judgment, Darla has to be present in the litigation because this is concerning her and she needs to be here. But if she leaves, there won't be adequate judgment because she left in the middle of her litigation. In order for her to assert any claims or defenses she needs to be here in the states. Even though she may or may not

have the intention of coming back she should because she needs to be here to have adequate judgment. Intent to change domicile?

In order for the big banks to have remedy they would need for Darla to come back because if she's not here, then it could be prejudicial to their case, since she is one of the main people in the action. Her presence is necessary to be there. If the action was dismissed because Darla failed to join then it could be prejudicial to their case and they will not have complete relief. Therefore, Darla is a necessary party and she needs to be here for the pending litigation. Therefore, big bank has satisfied FRCP 19. proceed, dismiss, stay?

Defense FRCP 14: Impleader-

Darla can claim FRCP 14, which states that it's where a 3rd party has been brought into the litigation because they have some fault and complete fault. She has 14 days from receveing the notice and must file it with the court. And can assert rule 12, 13 or any other remedy. Here, she can assert rule 12 and say that is was improper service since she is moved to India and they would need to compel her to come back. Because she already left and the service was improper therefore, she can get out of it.

END OF EXAM

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FRCP 26 - Discovery

Any party may obtain information from the other party in Discovery that is not-privileged, relevant to the claim and defense and proportionally calculated to obtain admissible evidence.

FRCP 34 - Request for Production of Documents or tangible things - a discovery tool

Party may seek to request all documents relevant to the discovery from the other party.

FRCP 36 - Request for Admissions

Party can propound request for admission on the other party as a discovery tool. The party must either deny, admit or do not deny and admit (dont' know).

Here, Grady's attorney propounded request for admissions to Dr. Meline. Dr. Meline had 30 days to respond and he failed to do it. Because he did not respond and send the answer back to Grady he admitted by default that he made no changes to the liquid formula since he obtained the patent in 2005 and that he did not test Grady for possible allergic reactions before the surgery. just because his attorney called back Grady's attorney later on it not of importance here, however these admissions will be valuable for Grady in his motion for summary judgment later on.

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FRCP 37 - MOTION to Compel Discovery information

The court will allow party's to make a motion to compel discovery disclosures or request for admission, only if the court verifies that the party tried to to get the information before coming to court for help. Here Grady did not do anything because Dr. Meline already admitted - so there was no need for it.

2. FRCP 26 (c)(1)(g) - Protective ORdersn

the court will in good cause grant a protective order against the party seeking the information if that information is either privileged or protected or trade secret and it would be either embarrassing to present it.

Here, Grady would like to know more information about D r. M's patent and Dr. M can file a motion to protect his trade secret. the court would the most likely either have in-camera review or talk to the attorney before (without the parties present) to see if they can get a plant as how to get this patent information, if it was available without disclosing too much. Most likely the court will order Dr. M to present some information and protect the most valuable parts to patent that is considered to be a trade secret. What goes against Dr M here has already litigated one case and the information about the patent either was out or most relevant patent information, needed for the case.

3. FRCP 56 - Motion for Summary Judgment

a party either defendant or plaintiff may make a motion for summary judgment at least 30 days after discovery ends and before trial. Moving party will claim that with clear and convincing evidence there is not genuine issue to the material fact in the case and the moving party is entitled to a judgment as a matter of law.

Res Judicata (precludes a party from relitigating the same claim again) and Collateral Estoppel (precludes a party to re-litigate the same issue twice). Both of these are judicial doctrines used for judicial efficiency and finality of litigation.

Res Judicata or Claim preclusion requires that both suits have same parties or privies and same T & O and the first suit must have been determined on the merits. Since we don't have same parties in Suit #1 2013 and this Suit (2014) RJ does not apply.

Collateral Estoppel

Issue preclusion must satisfy these requirements: the issue must have been fully litigate, b) the issue is necessary for the judgment int he second suit, c) the party against whom the CE is asserted has had a full and fair opportunity to litigate the issue

CE can be defensive (Shield) and Offensive (Sword) and can be mutal and non-mutual

NON-MUTUAL OFFENSIVE CE (Sword)

CE will apply here because Grady will like to bring the arguments from the previous lawsuit. this woul be non-mutual offensive collateral estoppel because there is a new party in the second lawsuit that is suing the same party in the suit #1. the court do not like offensive CE because it can be prejudicial against tte other party.

Here we have Grady how knows that Dr. Meline has already litigated in suit#1 the issue of professional negigence, specifically that Dr M failed to test three plaintifs for allergic reaction prior to performing surgery.

Dr. M is the same defendant as in the suit #1 but Grady is a new plaintiff trying to sue him for malpractice. Since D lost on the issue of negligence in the first suit, Grady wants to introduce this information to preclude this issue from being relitigated in his case. His is using it as a sword and the court will look into certain factors whether to allow it.

The court will look into whether Dr Meline had interest to fully and fairly litigate this issue in the first suit against all 3 plaintiffs. It cold be said that knowing Dr M had a lot at stake and had a huge interest to fully put his reasources, he litigated the first suit with all he got.

Also the court will look at whether Grady was just waiting to see the results from the other suit and that is why he did not join, but here facts show that he filed the suit in 2014 and he did not know about the other suit and could not joined.

The court will allow Grady to use issue preclusion (for failure to test - negligence) as his bases for motion for summary judgment. excellent

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4. FRCP 56 (see above)

If motion for SMJ gets denied,(it is judgment on the merits) then Grady either takes Dr. M to trial or uses ADR (alternative resolution and mediation to settle with him, especially since the evidence does not look so good for Dr M, he may want to settle the case and pay out Grady. Grady has many options:

Grady can also go on review

1291 - Final Judgment Rule

Parties may appeal judgments on the merits that are final. an exception is with

Interlocutory Review

The court allows parties to go up to Court of Appeal when it is not the final judgment

1291 - needs preliminary injunction

1292 - when the trail court cannot agree on certain issue and needs to review with the upper courts

54 a - when there is multiple parties and certain decisions do not need to wait (the allows the review after the i†enters final judgment order for that issue - and there is no need to wait). this would be the case for Grady's appeal on his Sdenial.

23 f - class actions certification are appealable

Write Mandamus - everything and anything but hardly used

END OF EXAM

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FRCp 26 - Discovery

Any party may obtain information from the other party in lawsuit that is not-privileged, relevenat to the claim and defense and proportianly calculated to obtain admissible evidence.

END OF EXAM

* Laptop malfunction tough break, good pts adapting.
* student hand wrote #3 in bluebook.

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Discovery 26 - permits a party to discover any non privileged matter that is relevant and proportional to their claim or defense or information that appears reasonably calculated to lead to discovery of admissible evidence.

FRCP 33: interrogatories are a discovery tool and can be served on a party to the cause of action. it is important to take in fact that interrogatories cannot be served on non parties and are limited to 25 questions typically.

FRCP 35: physical evaluation: federal rules of civ procedure rule 35 allows a movant to compel mental and physical examination for party opponents as well as persons under their legal control through a showing of good cause and when a persons mental or physical condition is at issue. the party seeking to obtain a medical evaluation, must obtain a ct a court order. in Schlagenhauf v. holder the court found FRCP 35 to apply to defendants as well as plaintiffs. The court found no basis to apply the doctrine to in favor of one class of litigants and not the other. The court held that FRCP 35 only requires that the person to be examined only be a party to the action not an opposing party of the movant. Here, petioner is clearly a party to the action. However, he is not claiming anything about his medical issue. Perhaps Marina harbor is using it as a defense and thats how its becomes an issue. The ct will most likely order the examination since the Marina Harbor will imply that his Peripheral Neuropathy did in fact contribute to the incident then they can pertain some medical information. However a ten year past history seems very excessive and they need to focus on the body part at issue or the specific region, not the very broad upper extremities in Rog 5.

Although the plaintiff will argue that his hands are not an issue in the case, the defendant will argue that the accident occurred early in the morning and that temperatures are usually colder in the morning, they will also argue that the site of the accident was a harbor which is usually always colder than inland. Also, the date of the accident occurred in February which is one of the coldest moths of the year. All these suggest very cold weather and the harbor has known J for 20 years and are all aware his Peripheral Neuropathy gets worse when its cold outside. overall, there is plenty of evidence to establish the good causes needed to order a medical exam. + observed shaking arms. interrogatory ruling (p. 5) (seen deep of w)

2a. FRCP 30 - depositions by oral examination:

depositions can be oral (30) or written (31) A deposition can be taken of a party or a non party. However, you must subpoena a non party or else they do not have to show up. Here, Willie was served a notice that told him the time, place and date of the deposition. However, because willie is a non party and simply just a bystander, his lawyer was correct in telling him that he does not have to show up. Willie will not face any consequences if he does not attend the deposition because the facts do not state that there was a FRCP 45 Subpoena from the ct ordering Willie to attend. However, if a subpoena was issued and willie failed to show up, he would face severe consequence such a being held in contempt. fined, or in severe cases face jail time.

2b. Willies lawyer should tread in good faith. There is no reason to make everyone go out of their way. Willie was a key witness and one of the only people who saw the incident occur. Therefore, his lawyer should suggest that Willie make himself available and take a few hours out of his busy day to attend the deposition. Since willie and his lawyer are being so reasonable, opposing counsel will most likely do the same and try to cater to willies work schedule, geographical needs and other time sensitive issues. ie: depending on how long the deposition is they can split it up or make it only an hours long etc. In addition, willies lawyer should obtain a signed engagement agreement with a clause

stating that he can accept service for willie so the other party will not need to hire a service processor. Habits like these are what ultimately make litigation easier for clients as well as build high reputations for attorneys. nice.

3. Compulsory Counterclaim FRCP 13 a : a claim made by a defendant against a plaintiff that arises from the same transaction or occurrence as the plaintiff's claim. the claim is compulsory in the situation in that it must be raised in the defendants answer, or it is waived. Here, James Files this suit one week after the accident and then the Harbor promptly files its answer to the complaint. By doing so, they effectively waived any counterclaim for the 300k in damages and 80k in revenue that James caused to the dredge. To fix this, a mtn to amend (15) can be brought. However, since 30 days have passed (based on the requests for interrogatories) the ct will most likely deny the mtn to amend since it was not done in a timely manner.

FRCP 18 joinder: any party who asserts a claim, counterclaim, cross claim or third party claim, may join any claim they may against an opposing party. The harbor atty could possibly bring H as a third party D under FCRP 14 - impleader. with him being negligent and liable for indemnity or contribution to the harbor. However, he is an employee of the marina so respondent superior might apply and most likely not end well.

Lastly, judges hate discovery disputes so a lawyer must think tactically when bringing a mtn to compel. Parties must meet and confer first before bringing a motion to compel and the facts do not state that this happened. FRCP 37 requires that a mtn to compel include a certification that the movant has in goof faith conferred or attempted to confer with the party not making the disclosure in any effort to to secure the disclosure without court action. here, the facts do not indicate that the marina attorney made any good faith actions to confer with J's lawyer. before the mtn was filed, she should have tried to reason with J's lawyer. also, if if a responding party fails to answer discovery completely, the party seeking discovery does not have to file a mtn to compel but instead a mtn for sanctions

under FRCP 37 d 1 a . Since J did not answer partially but instead did not answer at all, the marina lawyer should have filed for sanctions. Although it will most likely piss the judge off and incur more billable hrs for her client, she can continue to file a mtn for sanctions 37 d 1 a

END OF EXAM