

SLO

Civil Procedure Final Examination

Spring 2022

Prof. M. Rivas

Question 1

Perren loves the movie Roman Holiday. Because of this, Perren has an extensive collection of memorabilia, but Perren has always wanted the iconic Vespa from the movie. Perren was finally able to buy the original Vespa used in the movie from Devyn for \$100,000. Devyn made sure to let Perren know that Devyn had just personally installed new tires on the Vespa and tightened the wheels.

Three months later, Perren took the Vespa out for a ride for the first time. As Perren was riding, the rear wheel came off the scooter and resulted in a crash, in which Perren was injured and the scooter was damaged. Perren began researching for Vespa parts and discovered that Devyn was selling another Vespa as the original Vespa ridden by Peck and Hepburn in the movie. Further investigation led Perren to discover several additional listings for the sale of the original movie Vespa.

Perren sued Devyn, seeking \$100,000. The complaint, in relevant part, stated: "Devyn is a fraudster, and needs to pay for it." Perren also claimed that Devyn negligently installed the scooter's tires and sought compensation for physical injuries and repair of the scooter. Finally, Perren sought an injunction to stop Devyn from selling additional "original" Vespas.

Devyn made a timely request for a jury trial. As the case progressed through discovery, Devyn decided to withdraw that request.

1. How should Devyn respond to Perren's complaint? Discuss.
2. May Perren's two claims against Devyn be heard together? Discuss.
3. Will there be a jury trial? On what claims, if any? Discuss.

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Question 2

Dory was a delivery driver for Dates for Days, a premium fruit subscription service. Each day, Dory would drive substantially the same route, so Dory began to daydream on the drive. One day Dory was driving the usual route, daydreaming, and drove through a stoplight in a part of town with a lot of pedestrians. Phoenix and Pamola were walking across the street when Phoenix was hit by Dory's van, causing Phoenix severe burns. Dory narrowly missed Pamola. Pamola was not injured, but was extremely shaken by the incident and suffered migraines for months afterwards.

Phoenix sued Dory in a negligence action seeking monetary damages. At trial, a jury found that Dory's negligence was the sole cause of the accident and awarded Phoenix \$50,000. Later, Pamola decided to sue Dory for damages as well. Pamola filed a partial motion for summary judgment based on the jury's previous finding of fact that Dory was solely responsible for Phoenix's damages. The court granted the motion.

A year later, Phoenix's skin still had not regenerated as expected. There was an experimental treatment available, but it cost another \$20,000. Phoenix filed a new lawsuit against Dory to pay for the treatment required to restore Phoenix's skin.

Pamola later filed suit against Darcy for the same accident, seeking damages.

1. Did the court err when it granted Pamola's partial motion for summary judgment? Discuss.
2. Assuming there are no issues of jurisdiction, what defense should Dory raise in the second suit brought by Phoenix?
3. Assuming there are no issues of jurisdiction, what defense should Darcy raise?

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Question 3

Demi was driving on the wrong half of the road. Pilar saw Demi coming and honked the train-style horn that Pilar had specially installed the week prior. Though still far enough away to avoid the accident, Demi did not swerve and struck Pilar head-on. Pilar's right foot was injured and had to be amputated. Pilar filed a complaint in federal district court, based on diversity jurisdiction and seeking damages. Demi filed a timely answer. The parties then engaged in discovery.

Pilar sent Demi a letter, which stated in relevant part:

I have enclosed a list of acceptable medical professionals to which you must present yourself within 21 days for examination. Failure to do so shall result in our bringing a motion to compel with a request for sanctions.

With the letter was a list of three medical providers: a psychiatrist, an eye doctor, and an ear doctor. Demi did not contact any of the doctors. Pilar filed a motion to compel, which was granted by the court. The court then ordered Demi to submit to all three examinations.

Demi had already conducted eight depositions of various witnesses when Pilar received a notice of deposition. Pilar failed to appear. Demi then sent Pilar a notice to depose Dr. Marten, the doctor that amputated Pilar's foot at the ER. Pilar advised Dr. Marten of the scheduled deposition but Dr. Marten did not appear. Demi was tired of having to reschedule depositions, and decided to send Dr. Marten a subpoena to appear for deposition. Dr. Marten ignored the subpoena and did not appear at the deposition.

Demi filed motions against Pilar and Dr. Marten. Against Pilar, Demi requested that the court compel Pilar to appear for deposition. Against Dr. Marten, Demi requested findings of contempt for failure to comply with a court order.

1. Was the court correct to grant Pilar's motion to compel and award sanctions? Discuss.
2. How should the court rule on: a) Demi's motion to compel discovery against Pilar and b) Demi's motions for contempt against Dr. Marten? Discuss.

San Luis Obispo College of Law
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Question 1-Answer Outline

1. How should Devyn respond to Perren's complaint? Discuss.

Complaint: Requires a short statement of jurisdiction, short statement of the claim showing pleader is entitled to relief, and a demand for judgment for relief.

Special pleading requirements for fraud: Must state with particularity those circumstances that establish fraud.

Rule 12(b)(6) Motion: The defendant may file a motion for failure to state a claim upon which relief can be granted. This motion can be made any time prior to or at trial.

Perren failed to state a claim for fraud. Her conclusory statement that Devyn is a fraudster does not meet the requirement that fraud claims must be stated with particularity. Fraudster is a legal conclusion and the complaint does not provide any information for Devyn to be on notice as to how to defend against the claim. Devyn should bring a 12(b)(6) motion for failure to state a claim upon which relief can be granted.

2. May Perren's two claims against Devyn be heard together? Discuss.

Joinder of claims: A plaintiff can join any number and type of claims against a defendant, even if unrelated.

There is only one plaintiff and one defendant here, so Perren may join any and all claims against Devyn, even if they are unrelated.

3. Will there be a jury trial? On what claims, if any? Discuss.

Right to jury trial: Seventh Amendment guarantees jury trial. The guarantee turns on whether the remedy is legal or equitable. Where there are both types, the action at law is to be heard first and the court is bound in the later equitable action by a jury's factual findings.

Withdrawal of demand: May be withdrawn, but requires all parties to consent.

Legal claim: Suit seeking monetary damages is a legal claim and guaranteed a jury trial.

Equitable claim: Specific performance is an equitable claim and is not guaranteed a jury trial.

Perren does not have a right to a jury trial in the claim for injunction to stop Devyn from selling additional "original Vespas, because an injunction is an equitable claim. Perren is entitled to a jury trial as to the negligence claim, though, because the claim for damages is an action at law. Thus, the negligence action would be heard first and the judge hearing the equitable claim would be bound by any factual findings made by the jury.

Perren made a timely request for jury trial, so there will be a jury trial in the action at law, unless Devyn consents.

Question 2-Answer Outline

1. Did the court err when it granted Pamola's partial motion for summary judgment? Discuss.

Summary judgment

May be granted if, from the pleadings, affidavits, and discovery materials, it appears that there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.

Partial summary judgment

May be rendered as to issue of liability, even though there is an issue as to damages.

Issue preclusion (collateral estoppel)-Offensive

Requires: final judgment, issue actually litigated and essential to judgment.

When used offensively, the party using issue preclusion generally must have been party to the prior action or in privity.

However, courts will allow it where it is fair to the defendant to do so.

Dory had already been found to be the cause of Phoenix's damages. Pamola's damages stemmed from the same incident for which Dory had already been found liable. Therefore, Pamola could use issue preclusion offensively against Dory as to the issue of liability. The issue of any damages owed to Pamola would still need to be decided. However, Pamola was not a party to the first action, nor in privity with Phoenix. Thus, Pamola would only be able to use issue preclusion against Dory if a court found it fair to Dory to do so.

2. Assuming there are no issues of jurisdiction, what defense should Dory raise in the second suit brought by Phoenix?

Claim preclusion (res judicata)

Valid, final judgment on the merits bars the same cause of action in a later lawsuit between the same parties.

Phoenix has already sued and won against Dory once. There was a jury trial and damages had already been awarded. Thus, this second claim from Phoenix is barred.

3. Assuming there are no issues of jurisdiction, how should Darcy respond?

Summary judgment

May be granted if, from the pleadings, affidavits, and discovery materials, it appears that there is no genuine dispute of material fact and the moving party is entitled to judgment as a matter of law.

Issue preclusion (collateral estoppel)-Defensive

Requires: final judgment, issue actually litigated and essential to judgment.

When used defensively, the party using issue preclusion must have been party to the prior action or in privity. If used by a non-party, fairness to the non-party will be considered.

Darcy should file a motion for summary judgment and use issue preclusion defensively. Dory has already been found to be solely at fault for the accident. Therefore, it would not be fair to allow Pamola to claim that Darcy is at fault.

Question 3-Answer Outline

1. Was the court correct to grant Pilar's motion to compel and order the exams? Discuss.

Scope of discovery

Any relevant, non-privileged matter that is proportional to the needs of the case.

Motion to compel discovery

Witness must participate in good faith. Movant must show that an attempt was made to avoid court intervention.

Physical/Mental exam

Requires court order. Condition must be at issue and there must be a showing of good cause.

Pilar did not go to the court first to show good cause for the exams, thus there is no basis for a motion to compel.

The court could order these three exams, but Pilar would have to show good cause. There could be cause for a mental examination because Demi was driving on the wrong side of the road and could have been trying to harm themselves or others by driving in such a manner. There also is a question of whether Demi could see, as Demi was on the wrong side of the road and Pilar could see Demi. Finally, there is a question as to whether Demi could hear. There was enough time to avoid the accident when Pilar honked, but Demi continued to the head-on collision with Pilar.

2. How should the court rule on: a) Demi's motion to compel discovery against Pilar and b) Demi's motions for contempt against Dr. Marten? Discuss.

Depositions generally

Only 10 depositions allowed. Additional depositions require leave of court or stipulation of the parties.

Compulsory appearance of witnesses

Parties are required to appear at depositions upon valid notice. Notice to party is not sufficient to compel attendance of non-party. Non-parties must be subpoenaed to require attendance.

Motion to compel discovery

Witness must participate in good faith. Evasive or incomplete answers are deemed as failure to make discovery. Movant must show that an attempt was made to avoid court intervention.

Failure to comply with court order

Parties must comply with valid court orders or risk a finding of contempt

Extra: Doctor-patient privilege

Doesn't apply because plaintiff put physical condition at issue.

Extra: Choice of law

In a diversity action, the district court will use state substantive law and federal procedural law.

Pilar is a party and was given notice to appear for deposition. Demi still has 2 depositions available before having to request additional from the court. Thus, the motion should be granted.

There should be no finding of contempt against Dr. Marten for failure to appear at the first deposition. He was not noticed, Pilar was. Moreover, Dr. Marten is not a party and a subpoena is required to compel a non-party's attendance. There should, however, be a finding of contempt for failure to appear at the second deposition. A subpoena issued to Dr. Marten, which is a court order. Dr. Marten failed to appear, thus violating that court order.

TS

1)

^{Perron's}
How Should Devyn respond to Person's Complaint?

Complaint: A complaint should contain three small statement addressing: (1) why the court has jurisdiction, (2) why the P is entitled to relief, and (3) a demand for judgment and relief.

Here, because the P made a big deal about the fraud of D he would have to address why he is entitled to relief with greater precision. The judge will use their own experience along with the facts, circumstance, and actions to determine if the claim is probable.

particularity

DON'T FORGET TO ANALYZE THE FRAUD CLAIM. "FRAUDSTER" ≠ PARTICULARITY STATED w/

D should file a motion for failure to state a claim: This would require the judge to make a determination that the claim asserted in the case is not legally sufficient to proceed to court. D would provide the court with facts and evidence to support this by arguing; (1) P drove the Vespa for 3 months. Thus, the actual cause required to establish the claim for negligence is ^(new paragraph) (2) far removed, (2) D told P that he had installed new tires, this process may have had impact on the the tires coming off. It is a little scooter and this could have been done without removal., (3) There are possible explanations for selling Vespa parts that do not relate to fraud.

what is untimely? the mot for failure to state a claim?

this is the part that needs analysis

Untimely, because relevant parts of the claim rests on the fraud of D and P may have not stated it in sufficient particularity this is the claim the Devyn should use to respond to the complaint, provided that the allegations are untrue.

definite

D could make a motion for a more definite statement: When a statement is so vague as to not allow the other party to craft a reasonable response the court may order to other party to amendment or rewrite the claim. Here, provided the above is true, it would be

impossible for D to state an answer that could address the issues. This is something that could be done but not recommended over the possible reprocess above.

May Perren's two claims against Devyn be heard together?

✓ Single Action Joinder of Claims: The court values efficiency. Thus, P may bring as many claims as they have against the D. They need not arise out of the cause of action or be alliterated by fact or law. So Parren may bring both claims and they may be heard together.

Will there be a jury trial?

Give the whole rule. When must a jury trial be requested?

Once the assertion for a jury trial is made and the court has affirmed it. The only way it may be receded is through both parties consenting. ^(new paragraph) Here, D ask for a jury trial and discovery has started. Discovery happens after the discovery conference. The court has likely granted a jury the jury trial because it would be a vital part in making the rules for discovery. Thus, the only way to retract the jury trial would be for P to agree to do so. Untimely, it will be for P to decide once D ask for the jury trial to be removed.

On what claims, if any?

tighten up this rule. Also, in what order would a case be heard that had legal + equitable remedies?

Jury Trial: The right to a jury trial if a fundamental right provided by the 7th amendment and applicable to all state and local governments through through 14th amendment. The right is is protected even when the Erie doctrine may prevent a case from being heard by the federal court. For the right to be asserted the party must petition the court in writing

and provided notice to all parties. The court will grant the trial for an issue or all issues that ask for a legal remedy, over \$20 dollars, that existed in 1791.

Signal you're beginning analysis of facts w/new paragraph and "here."
Here, There are two remedies sought by P: (1) compensation for physical injuries, and (2) repair of the scooter. Don't forget (3) injunction.

(1) Compensation for physical injuries involves seeking a legal remedy ^{work on this. the idea is that} which is money ^{money damages are historically legal damages which} damages and establishes the first element. The fact that we are in court asking for \$100,000 established the claim sufficiently over \$20. Lastly, it is center that people sued for physical injury in 1791. Thus, this would be considered a jury trial issue.

(2) Repair of the scooter will likely be determined by the 1791. The court will likely decide using this reasoned thinking; (1) the scooter is chattel, (2) is there a functional equivalent of the chattel that existed in 1791, (3) is there existing case precedent to establish this. It is more probable than not they would find sufficient precedent to establish this element.

repair of the scooter is also money damages = legal remedy.

Consequently, both claims are jury trial issues.

(3) injunction is an equitable remedy that would not be entitled to a jury trial.

END OF EXAM

2)

Nice job! Loved seeing "because" show up so often.

Phoenix/Pamola v. Dory

1) Court err in granting Partial Motion for Summary Judgment?

A partial motion for summary is appropriate when there is no genuine dispute of material fact. The movant has the initial burden of proof to demonstrate to the court that there is no genuine dispute, and the burden shifts to the non-moving party to demonstrate that there are facts in dispute (that the jury (or court in a bench trial)) can resolve.

Here the moving party, Pamola, seeks partial summary judgment because they allege that some of the issues present in their current case have already been litigated and decided by a court. They contend that since it has already been litigated, there is no factual basis on which the Defendant can reasonably dispute the issue of Dory being solely responsible. They contend that because the facts, for that issue, have been decided the parties should not relitigate the dispute. For this motion to have been properly successful, the Plaintiff must have correctly applied the doctrine of issue preclusion. The court erred in granting the motion because the requirements of the doctrine of issue preclusion were not met.

1a) Issue Preclusion

Issue preclusion applies when there is an earlier issue that has been litigated, which resulted in a valid, final judgment on the merits, the same issue is attempting to be relitigated, the issue was previously fully and fairly litigated, the determination of the issue in the earlier case was essential to the judgment. Additionally, the doctrine of issue preclusion may only be used against a party who was a party in the previous action, or a party in privity with the party in the previous action. Traditionally, issue preclusion may only be used by those that were also parties to the prior action (or in privity with the party

in the prior action). Modernly, the courts will evaluate whether the party by whom it is being used unfairly seeks to take advantage of this doctrine. The court will evaluate these fairness factors based on whether the Plaintiff in the current action took a "wait and see" approach, if the defendant in the prior (and current) action could reasonably anticipate that there would be subsequent litigation stemming from the same claim, and whether it is reasonable to preclude relitigation of the issue.

Here, the issue that Pamola is seeking to prevent Dory from relitigating is whether Dory was solely responsible for the accident. Pamola contends that there was a valid, final judgment on the merits. The facts support this contention because we are provided that there was a jury trial that explicitly determined Dory's negligence was the sole cause of the accident. A jury would have deliberated, and discussed the issue of Dory's negligence to have made this determination. Additionally, the facts provide that there was an award made by the court, which further supports a valid, final judgment because the case was adjudicated by the jury and damages awarded, bringing a full conclusion to the proceedings. Here, Pamola will contend that the same issue across both cases is present, and this too is supported by the facts. The facts provide that, in case one, the jury found that Dory's negligence was the sole cause. In case two, Pamola is likewise asserting that Dory was the solely responsible for Phoenix's damages. Here, Pamola will assert that the issues were fully and fairly litigated by the parties in the earlier action. This too is supported by the facts because the facts provide that the first case went all the way to trial and a jury award, as opposed to an out of court settlement between the parties. Likewise, this issue would have been vigorously litigated between the parties because this issue was essential to the ultimate question of fact before the jury, Dory's negligence. Finally, this issue was essential to the judgment because the facts provide that the jury found on this precise issue.

Furthermore, the mutuality requirement of offensive issue preclusion is met because Pamola seeks to apply the earlier judgment against the same party in the previous case, Dory. Lastly, Pamola's application of issue preclusion would fail if adjudicated in a jurisdiction that applies the traditional approach because the traditional approach requires that the party using issue preclusion also be a party (or in privity) with the prior action. Modernly however, the Court will apply the fairness factors in making this determination. It appears that Pamola did apply a "wait and see" approach because, while she was harmed in the same occurrence as Phoenix, she waited until *after* Phoenix's case was fully adjudicated by the court. Additionally, it is unlikely that Dory would have reasonably foreseen subsequent/additional litigation following the suit by Phoenix. Pamola did not suffer any direct, physical injuries in the accident, but is instead alleging emotional damages as an incidental affect of the accident. These harms are challenging to perceive, and would not necessarily appear intuitively to the Defendant because of their ephemeral nature.

To support their claim against these fairness factors however, the Plaintiff will contend that a court has already determined only a single issue in the present litigation. The determination of Dory's liability for Phoenix's injuries is only a single issue in the litigation against Dory, and is not necessarily conclusive of liability that Dory may have for alleged injuries caused to Pamola.

In balancing these above considerations, the court erred in the granting of Dory's Motion for Partial Summary Judgment.

Could have gone either way and you did a great job analyzing the arguments.

2) Dory's Defenses in Second Phoenix Suit

Claim Preclusion

Claim preclusion prevents parties from relitigating claims that have already been adjudicated. This doctrine requires that the earlier litigation presented a valid, final judgment on the merits, that the same claim be present across both litigations, and that there is the same claimant and same defendant in both cases.

Here, Dory should raise the defense of claim preclusion to prevent Phoenix from relitigating his claim that had been decided in his earlier action. The earlier claim had been valid, and final, and on the merits because a jury made the final determination in that case, and reached a full determination demonstrated by their award of damages to Phoenix. Likewise, the claimant is the same from the prior action, as Phoenix sued Dory in the first action and in this second action, while Dory is the defendant in both actions. Further the same claim is present in both actions because Phoenix is suing for damages (in both actions) arising out of the same transaction or occurrence. This is the same transaction or occurrence because the damages resulting from the burns, and then later the damages Phoenix needs to pursue additional medical care, both stem from the auto accident in which Dory hit Phoenix while daydreaming.

As all of the elements are met, Phoenix will be prevented from relitigating their claim and the action will be dismissed.

3) What defense should Darcy raise?

Issue Preclusion

Rule, see above.

Pamola is seeking relief from an independent third party, who was not sued in the original action against Dory, and appears to be incidental and uninvolved in the original claim. Darcy should raise the defense of issue preclusion because the issue of Dory's liability as the sole cause of the action was already litigated. The earlier suit against Dory appeared to

have resulted in a valid, final judgment on the merits, a quality which is exemplified by the jury verdict and award of damages against Dory. Additionally, the jury trial also indicates that the issue was fully and fairly litigated because the determination of Dory's liability would have been vigorously defended in such a case, where the negligence of Dory is an essential element to proving that Dory is liable for Phoenix's injuries. Further, the determination of Dory's negligence would have been essential to the judgment because the negligence of the party would have been necessary in making a determination and award of damages. Further, the same issue is presented, that the party who is being sued negligently caused the accident. The Plaintiff may argue that the issue is not the same, because the issue litigated in the earlier case was whether *Dory* was the cause of the incident, rather than *Darcy*. The defense will argue that the ultimate issue that was litigated was *who* was negligent in causing the accident. The court will side with the Defendant Darcy because the issue of *who* was negligent (it was determined to be Dory) was already fully litigated in the earlier action, and to parse the earlier issue decision in the way the Plaintiff suggests, leaves a high chance of multiple and inconsistent judgments for the same claim but against different parties.

Darcy will want to use issue preclusion in this matter defensively. As a defensive use, issue preclusion may still only be applied against those that were parties to the prior action. The facts do not indicate that Pamola was in the prior action, nor that she was in privity with the parties in the prior action. As a result, Darcy's use of issue preclusion will fail.

probably not? Barbi p. 89
still good reasoning, though.

END OF EXAM

3)

Pilar v. Demi

1a) Court correct to grant Pilar's motion to compel against Demi?

Discovery

All relevant materials are subject to discovery, except those which are privileged, and only those materials which meet the scope and proportional needs of the case.

Here, P is seeking to force D to produce themselves for a medical examinations, from a psychiatrist, an eye doctor, and an ear doctor. All three types of examination are relevant to the instant case because they tend to demonstrate a fact of material consequence, in that the D may have had some medical condition that is causally connected to the claim. Additionally, the Plaintiff will claim that these requests do meet the scope and proportionality of the case because of the nature and extent of the Plaintiff's injuries. Plaintiff is alleging that Defendant was the cause of his foot being amputated, a harm that very well would elicit large amount of damages due to the nature of the harm.

Independent Medical Examination

A party may request another party to undergo an independent medical examination only upon motion to the court, wherein good cause is shown, and the medical or mental status of the examined party is at issue in the case.

Could be, but need more analysis of why? why not?

Here, the physical and mental condition of the examined party (the Defendant) is not at issue in the case. This matter would be at issue if the Defendant was alleging certain defenses pertaining to his physical/mental condition, but we are not provided that he is. Therefore, the physical condition of the defendant is not at issue. Further, the facts

provide that the Plaintiff merely sent a letter to the Defendant demanding that the Defendant participate in these examinations. This is violative of the Federal rules because the Plaintiff must make a motion to the court first, and they did not do so in this case because they merely sent the Defendant a letter making such a demand. Further, there is nothing that supports a contention that there is good cause to support a showing to the court to support the motion. Good cause would exist where the matter is at issue, and there remains some ambiguity, reliability, or sufficiency in the discovery responses provided by the Defendant, pertaining to their medical condition. For instance, if the Defendant was asserting an affirmative defense that the Plaintiff's train-style horn (which is presumptively illegal) exacerbated the Defendant's underlying epileptic medical condition, a seizure resulted as a sequela of that condition, and that therefore Plaintiff was at least contributorily negligent, and the Defendant failed to support medical records or a certified/licensed doctor to support such a claim, then there would be good cause to support a motion to the court because, not only did the Defendant put at issue their medical condition, but there exists ambiguity and trustworthiness issues with the medical conditions that the Defendant was asserting. Not a single fact supports that the Defendant suffered from any medical (eye or ear) or psychiatric condition related to the underlying events.

try to come up w/ one or more. possibly trying to get i accident? couldn't hear horn.

Given that the Plaintiff has completely failed to motion the court, nor were the medical conditions at issue, nor were there any facts to support that there is good cause, the court has improperly granting the Plaintiff's Motion to Compel.

Motion to Compel

A motion to compel requires that the moving party demonstrate to the court that the moving party has attempted to resolve a discovery dispute with another party, in good faith, through the meet and confer process, and seeks that the court resolve the discovery dispute.

Here, the Plaintiff has prematurely asserted their motion to compel because they have not attempted to reasonably engage in the Meet and Confer process with the Defendant. The meet and confer process here would entail the parties meeting to discuss the issues (either in person, telephonically, digitally, or through correspondence). The parties have clearly not attempted to resolve their dispute -- the only communication that the Plaintiff has made to the Defendant was to demand that the Defendant engage in the medical examination. This does not sufficiently support the meet and confer process, nor the requirements of the motion to compel process, because there is no exchange of positions, or attempt by the parties to resolve their dispute on their own.

As such, the court has improperly granted the Motion to Compel.

Sanctions

Sanctions are appropriate when a party has not engaged in the discovery process in good faith, resulting in harm to their opponent. The amount of sanctions that is awarded is determined based on whatever amount is only sufficient to prevent/discourage the party from continuing to fail to engage in the process.

Here, sanctions are not appropriate because the Plaintiff is seeking that the Defendant participate in a form of discovery that is specifically disallowed by the rules. The Defendant can *not* be held to pay sanctions for failing to submit themselves to a medical examination where the medical examination is not ordered by the court. By failing to meet the Plaintiff's demand, the Defendant is not participating in the discovery process in good faith, but is participating in good faith and in accordance with the rules. The amount of sanctions is not discussed in dollars, and so it is impossible to quantify and determine whether the amount is reasonable. Any amount would be unreasonable given these facts.

As such, the Court erred in awarding sanctions.

2a) Demi's MTC against Pilar

Discovery

See rule above

Here, the deposition of the Plaintiff is relevant to the matter and meets the scope and proportional needs of the case. The deposition is relevant because it is very likely to elucidate some issue at hand, and meets the scope and proportionality because the deposition of the Plaintiff can be taken in a single day, and (while depositions generally are expensive) the damages alleged in this case are likely to be significant.

Depositions

A deposition is a procedure of collecting testimony from another party, or non-party, to collect relevant information pertaining to the litigation. Each party is limited to 10 depositions and each deposition is limited to 6 hours. Parties may stipulate to a greater number of depositions, or enlarge their duration, or they may move the court upon a showing of good cause. A deponent is a witness, who is providing testimony, under oath. Depositions may be oral or written. Parties need not be subpoenaed, while non-parties should be. Participants in a deposition must participate in the deposition in good faith. Failure to comply with a subpoena is a violation of a court order.

→ more that a subpoena is req'd to compel their attendance

Here, the Defendant noticed the deposition of the Plaintiff, but the Plaintiff failed to appear. The Plaintiff, being a party to the action, need not have to have received a subpoena to be forced to participate in the deposition noticed by the other party. As such, the Plaintiff is in violation of the federal rules because their participation (following a notice) is required.

Motion to Compel

See rule above.

The Plaintiff, having failed to participate in the deposition, in good faith, may be subject to a motion to compel. The defense, however, has failed to adequately participate in the meet and confer requirement for a motion to compel. The Defendant should have, in good faith, attempted to reschedule the deposition of the Plaintiff, should have sought to resolve whatever issues were preventing their participation if possible, and worked with the other attorney to do so. Having failed to do so, the court should deny the Motion to Compel.

2b) Motion for Contempt against doc

Depositions & Subpoenas

Rule, see above.

The doctor, a non-party to this action, should have initially received a subpoena but the Plaintiff failed to do so. The Plaintiff, upon failure for the non-party to appear at the non-subpoenaed deposition, then issued a subpoena compelling the doctor to attend. The attorneys for the doctor (should they retain one) should argue that the Defendant has exceeded their limit of 10 depositions. The Defendant will argue that the doctor represented the 10th deposition themselves, and that the limit only applies to the number of completed depositions, as opposed to a cap on the number of notices or subpoenas that the party can issue. The Defense will be successful on this matter, given that the doctor was the 10th witness actually noticed/subpoenaed to appear, against which the limit applies. The party seeking the motion for contempt need not seek to meet and confer with the party who has violated the subpoena.

*not necessary, but cannot compel
w/out subpoena*

*because he's in violation
of a court order*

As such, the court should grant the Defendant's Motion for Contempt.

END OF EXAM