

San Luis Obispo College of Law

Civil Procedure

Final Examination

Spring 2025

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General Instructions:

Answer Three (3) Essay Questions.

Total Time Allotted: Three (3) Hours.

Question 1

Pady is an influencer whose brand is based upon their three dogs. To attain the dogs' signature look, Pady dyes and cuts their coats so that the dogs appear to be wearing feather boas. Pady also keeps the dogs on a daily routine designed to keep them in peak health.

On one of the dogs' daily walks, a person (later identified as Denn) drove up to Pady and attempted to take the dogs. The person managed to take two of the three dogs. However, in the commotion, Pady was shot. Pady was treated at the hospital and released. Several weeks later, after Pady made an impassioned appeal online, the dogs were returned to Pady by Denn. Denn had shaved both dogs, so their signature feather boa look was ruined. Denn was angry that Pady did not accept their apology and started driving past Pady's home at all hours, and making a lot of comments on Pady's videos and posts about how Pady must be mentally unwell to use her dogs for online clout.

Pady sued Denn in federal district court, based on diversity jurisdiction, and sought damages for Pady's injury, the damage to the dogs, and damage to Pady's online brand. Additionally, Pady sought an injunction to stop Denn from driving on her street and posting on Pady's video and posts online. After Denn filed their answer, the parties engaged in discovery.

During discovery, Denn made a motion to have Pady physically and mentally examined. The court granted both motions. In retaliation, Pady decided to have Denn mentally evaluated. Pady sent Denn a letter advising them that they had made Denn an appointment with a psychiatrist. Denn did not go to the appointment. Pady filed a motion to compel, which was denied.

Later, Denn sent a notice of deposition to Pady, who appeared on the date and time scheduled but refused to answer any questions. Denn reached out to Pady, but Pady refused to communicate. Denn filed a motion to compel and asked for sanctions.

Approximately 30 days after the last pleading directed to the jury-triable issue was served, Pady made a request for jury trial.

1. Was the Court correct to grant the motion for physical and mental examinations of Pady? Discuss.
2. Did the Court err when it ruled on Pady's motion to compel? How should the court rule on Denn's motion to compel. Discuss.
3. Should the Court grant Pady's request for jury trial? If so, on which claim(s)? Discuss.

Question Two

Danni had a roommate, Perri, for approximately six months. Both parties promised there would be no pets in the apartment. After the first month, Danni realized that Perri didn't care about keeping their apartment clean. Danni tried to fix the issue by creating a chore chart, but still Perri didn't clean anything. To help motivate Perri, Danni told them about how, at work, they and their coworkers at the wildlife sanctuary use raccoons to help motivate themselves to clean. Perri assumed it was a joke and refused to clean.

Months went by and Perri still wouldn't clean. Danni warned them that they might have to use the raccoons to motivate them. A month later, Perri came home to absolute chaos. There were raccoons in the living room and they were touching/destroying Perri's things, including their collection of rare dolls. Perri became enraged and started throwing things at the raccoons. Danni rushed to protect the raccoons, knocking Perri over and causing them to hit their head. Perri struggled to stand but refused to go to the doctor.

Perri sued Danni for the damage to the rare dolls and for the replacement of other items destroyed by the raccoons. Perri also sought an injunction to keep Danni from bringing the raccoons to the apartment. Finally, Perri sued under a fraud theory because, according to the complaint, "Danni lied about not having pets." There were no other facts contained in the complaint as to fraud.

Danni filed a motion for failure to state a claim upon which relief can be granted. The judge denied the motion. All of Perri's claims were decided by jury, Danni was found liable, and damages were awarded.

Later, Perri began having split vision and severe headaches. They went to the doctor and discovered that they had received a significant head injury during the raccoon incident. Perri would need daily assistance for the rest of their life. Perri filed a suit to recover damages sufficient to provide them the care they needed. Danni filed a motion for summary judgment, which was granted by the court.

1. Did the Court rule correctly on Danni's motion for failure to state a claim upon which relief can be granted? Discuss.
2. Were Perri's claims properly heard by a jury? Discuss.
3. On what basis will Danni argue the motion for summary judgment? Was the Court correct to grant the motion? Discuss.

Question Three

P-Jay owns a small restaurant near Dangerous Creatures, a small community zoo. P-Jay's restaurant has an outdoor garden area, with exotic plants and a large, heated pond that contained koi fish. P-Jay takes care of the plants, but has a professional service maintain the pond and the fish. Pilar has a coffee shop next door to P-Jay's restaurant.

Recently, two river otters escaped from the zoo. The otters were seen on the zoo's security video climbing out of their enclosure and leaving the zoo. The otters were later seen playing in the snow, just outside the zoo. The zoo decided to let the otters remain loose because it created interest in the zoo's "otter cam."

A few days after the otters escaped, P-Jay noticed damage to the plants in the restaurant's garden seating area. Several of the plants were beyond saving and had to be replaced at great expense. P-Jay reviewed the restaurant's security video and saw two otters chewing on the plants and digging them up. P-Jay didn't notice any other damage.

P-Jay sued Dangerous Creatures for their negligent release of the otters, seeking damages relating to the otters' destruction of the plants. The case was heard by a jury, who awarded damages to P-Jay.

After the verdict, Pilar realized there had been similar damage at the coffee shop while the otters were loose and checked the coffee shop's security video. Pilar determined that the otters had caused the damage and sued Dangerous Creatures. Pilar filed a partial motion for summary judgment, which the court denied.

1. Did the Court err when it denied Pilar's motion for partial summary judgment? Discuss.
2. Use the same facts as above, but assume the following: Dangerous Creatures won the jury trial against P-Jay, and Dangerous Creatures was the one to file a motion for partial summary judgment in *Pilar v. Dangerous Creatures*. How should the court rule on Dangerous Creature's motion for partial summary judgment? Discuss.

Question 1-Answer Outline

1. Was the Court correct to grant the motion for physical and mental examinations of Pady? Discuss.

Scope of discovery

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

Physical/Mental Exams: Physical/mental exams of a party require a court order. Condition must be at issue and there must be a showing of good cause.

Physical Examination

Here, Pady has put their physical condition at issue by suing for damages that occurred as a result of being shot by Denn. Denn would have argued that Pady went to the hospital and was treated, and that Denn has a right to get information regarding the extent of Pady's injuries. Such an argument would be sufficient for the showing of good cause required to obtain an order for physical examination of Pady. Thus, the court was correct to grant the motion for the physical examination of Pady.

Mental Examination

In contrast, Pady has not put their mental health at issue. They are making no claims for mental distress that would support such an argument. Denn's belief that Pady is mentally unwell and their comments online have no bearing on whether or not Pady's mental health is actually at issue. There is no evidence here to support the good cause requirement required to obtain an order to have Pady examined by a mental health professional. Thus, the court was not correct to grant the motion for the mental examination of Pady.

2. Did the Court err when it ruled on Pady's motion to compel? How should the court rule on Denn's motion to compel. Discuss.

Physical/Mental Exams: Physical/mental exams of a party require a court order. Condition must be at issue and there must be a showing of good cause.

Compulsory appearance of witnesses

Notice is sufficient to compel attendance of a party at a deposition. Failure to comply may result in sanctions.

Motion to compel discovery

Movant must show that an attempt was made to avoid court intervention.

PADY'S MOTION TO COMPEL

Mental Examination

Here, there is no evidence putting Denn's mental health at issue. Denn has not made a counterclaim for damages based on their mental health and there is nothing about Pady's claim for damages that would put Denn's mental health at issue. Pady's wish to have Denn evaluated does not provide good cause and would not support a motion to obtain an order for a mental examination.

Motion to Compel

Here, Pady did not make a motion to the court for a mental examination, as required, but instead simply decided that Denn needed to be evaluated and sent Denn letter. The letter was not a court order and thus Denn was under no obligation to follow it. Usually, a motion to compel discovery would require that Pady reach out to Denn in an attempt to avoid court intervention. There are no facts suggesting that Pady did so but, even if they did, that would not save their motion. Their motion to compel fails because of the lack of a court order that would require Denn to comply. Thus, the court did not err when it ruled on Pady's motion to compel.

DENN'S MOTION TO COMPEL

Deposition

Pady is a party, so a subpoena is not required to compel their attendance at a deposition. A notice of deposition is sufficient. Pady appeared as required, but parties are required to participate in discovery in good faith. Pady did

not participate at all because they refused to answer any questions. Pady's appearance at the deposition was not enough, they were required to participate and Denn can seek court intervention.

Motion to Compel

Denn is required to try to contact Pady and resolve the issue in an attempt to avoid court intervention. Here, Denn attempted to contact Pady, but Pady would not communicate. Thus, the court will hear Denn's motion. Denn can argue that Pady refused to participate in violation of the requirement to participate in good faith. By doing so, Pady wasted Denn's time and money. Denn can seek sanctions requiring that Pady pay for Denn's cost. In addition, Denn can ask the court to require Pady to not only appear but participate in good faith in another deposition. Thus, the court should grant Denn's motion to compel and grant sanctions against Pady.

3. Should the Court grant Pady's request for jury trial? If so, on which claim(s)? Discuss.

Right to jury trial: Seventh Amendment guarantees jury trial for claims at law that exceed \$20.

Jury trial request: A party must request a jury trial no more than 14 days after the last pleading directed to the jury-triable issue is served. If the request is not timely made, the court has discretion to grant the request. If a party wishes to withdraw their request for a jury trial, all parties must agree to the withdrawal.

Legal/equitable claims: Suit seeking monetary damages is a legal claim and guaranteed a jury trial. An injunction is an equitable claim and is not guaranteed a jury trial. Where there are both legal and equitable claims, 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.

Right to Jury Trial-Claim for Damages

Here, Pady is seeking money damages for their injury, the damage to the dogs, and for the damage to their online brand. Money damages are considered to be legal damages. It is certain that these damages for the gunshot injury alone would exceed \$20 as it is expensive to be treated at a hospital for gunshot wounds. In addition, the damage to the dogs would likely be expensive, as would the claim relating to Pady's online brand. Thus, Pady's claim for legal damages could be heard by a jury.

Jury Trial Request

Here, Pady did not timely file their request for a jury trial. Such request must be filed no more than 14 days after the last pleading directed to the jury-triable issue is served, and Pady filed their request 16 days late. If Pady can convince the court that they had a good reason for the untimely request and granting such a request would not prejudice Denn, then Pady may be granted a jury trial. If Pady cannot convince the court then there will not be a jury trial. Thus, Pady will likely not be granted a jury trial on their claim for legal damages.

Right to Jury Trial-Injunction

Pady is also seeking an injunction, which is an equitable claim. If Pady is granted a jury trial on their legal claims, such claims would be heard first. The claim for the injunction would then be heard by the court and the court would be bound by the jury's factual findings. Thus, Pady will not have a jury trial on the claim for injunction.

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Question 2-Answer Outline

1. Did the Court rule correctly on Danni's motion for failure to state a claim upon which relief can be granted? Discuss.

Motion for failure to state a claim

A 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.

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.

Here, Perri failed to state a claim for fraud. Their conclusory statement that “Danni lied about not having pets” does not meet the requirement that fraud claims must be stated with particularity. The complaint does not provide any information for Danni to be on notice as to how to defend against the claim. Therefore, the Court ruled incorrectly on Danni’s motion.

2. Were Perri’s claims properly heard by a jury? Discuss.

Right to jury trial: Seventh Amendment guarantees jury trial for claims at law that exceed \$20.

Jury trial request: A party must request a jury trial no more than 14 days after the last pleading directed to the jury-triable issue is served. If the request is not timely made, the court has discretion to grant the request. If a party wishes to withdraw their request for a jury trial, all parties must agree to the withdrawal.

Legal/equitable claims: Suit seeking monetary damages is a legal claim and guaranteed a jury trial. An injunction is an equitable claim and is not guaranteed a jury trial. Where there are both legal and equitable claims, 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.

Right to Jury Trial-Claim for Damages

Here, Perri is seeking money damages for the damage to their rare dolls and for the replacement of other items destroyed by the raccoons. Money damages are considered to be legal damages. It is reasonable to assume that these damages would exceed \$20 because Perri’s dolls are rare and would likely be expensive as a result. In addition, replacement of the other items damaged by the raccoons could easily exceed \$20. Thus, Perri’s claim for legal damages could be heard by a jury.

Jury Trial Request

Here there are no facts regarding if and when Perri or Danni requested a jury trial. If they timely filed such a request, then the damage claims would properly be heard by a jury.

Right to Jury Trial-Injunction

An injunction is a form of equitable relief, which does not grant Perri a right to a jury trial. Here, all of Perri’s claims were heard by a jury, which was improper because there is not jury trial right for equitable claims like Perri’s claim for injunctive relief. Therefore, the equitable claim was improperly heard by a jury.

3. On what basis will Danni argue the motion for summary judgment? Was the Court correct to grant the motion? Discuss.

Motion for summary judgment

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

Claim preclusion (res judicata)

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

Here, Perri has already sued and won against Danni once. There is no dispute of fact here. Danni has already been found liable and a jury already awarded Perri damages for their property. Perri may argue that the extent of the head injury was unknown at the time of the first suit, but they will not prevail. First, Perri knew they had difficulty standing after the hit and refused to go to the doctor. Second, courts look to whether the second suit stems from the same transaction or occurrence as the first. Here, both the suit for the damages to Perri’s personal property and the suit for Perri’s head injury stem from the same accident. Thus, this second claim from Perri is barred and the court was correct to grant Danni’s motion.

Question 3-Answer Outline

1. Did the Court err when it denied Pilar’s motion for partial summary judgment? Discuss.

Motion for partial summary judgment

May be granted as to some but not all of the claims if from pleadings, affidavits, and discovery materials it appears there is no genuine dispute of material fact and moving party is entitled to judgment as a matter of law.

Issue preclusion (collateral estoppel)

A final judgment, where the issue was actually litigated and essential to judgment may bar litigation of the same issue.

As a sword

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.

Here, Pilar can use a partial motion for summary judgment to focus the action solely on damages. The issue of negligence is precluded (see discussion below), leaving no dispute of material fact as to negligence. This would leave only the issue of Pilar's damages to be determined.

Here, Pilar is trying to use the previous action as a sword against Dangerous Creatures because they were already found to be negligent in the action brought by P-Jay. In the previous action, there was a valid final judgment in the form of a jury verdict in P-Jay's favor. The jury specifically found Dangerous Creatures to be negligent against P-Jay and awarded damages relating to the negligent release of the otters' and their subsequent destruction of the plants, so the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the judgment of negligence against Dangerous Creatures. As the defendant in the previous action, Dangerous Creatures was a party, so courts would likely consider it to be fair for Pilar to use of the previous action as a sword against him. Thus, the court erred when it denied Pilar's motion for partial summary judgment.

2. Use the same facts as above, but assume the following: Dangerous Creatures won the jury trial against P-Jay, and Dangerous Creatures was the one to file a motion for partial summary judgment in Pilar v. Dangerous Creatures. How should the court rule on Dangerous Creature's motion for partial summary judgment? Discuss.

Motion for partial summary judgment

May be granted as to some but not all of the claims if from pleadings, affidavits, and discovery materials it appears there is no genuine dispute of material fact and moving party is entitled to judgment as a matter of law.

Issue preclusion (collateral estoppel)

A final judgment, where the issue was actually litigated and essential to judgment may bar litigation of the same issue.

As a shield

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

Here, Dangerous Creatures can use a partial motion for summary judgment to prove that they were not negligent. The court will likely agree that the issue of negligence is precluded (see discussion below), leaving no dispute of material fact as to negligence. Thus, the court would find that Dangerous Creatures is not negligent for purposes of the instant action.

Here, Dangerous Creatures can use the previous action as a shield against Pilar because Dangerous Creatures was already found not negligent. In the previous action, there was a valid final judgment in the form of a jury verdict in Dangerous Creatures' favor. By ruling for Dangerous Creatures, the jury specifically found Dangerous Creatures not negligent against P-Jay for the negligent release of the otters' and the damage to P-Jay's plants, so the issue of negligence was actually litigated. Finally, the issue of negligence would have been essential to the jury's verdict. As the defendant in the previous action, Dangerous Creatures was a party so courts would likely consider it to be fair for Dangerous Creatures to use the previous action as a shield. Thus, the court should grant Dangerous Creatures' motion for partial summary judgment.

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DENN'S MOTION FOR PHYSICAL AND MENTAL EXAMINATIONS OF PADY

SCOPE OF DISCOVERY

The scope of discovery is all relevant and non-privilege information that is proportional to the needs of the case. The standard for discovery is all relevant and non-privileged information that is reasonably calculated to lead to the discovery of admissible evidence.

Here, Denn would argue that the mental and physical examinations of Pady are within the scope of discovery because Pady seeks recovery of damages for her physical injuries from being shot and he believes that Pady is mentally unwell because she is using her dogs for online clout. Denn would argue that a physical examination would result in relevant information because a physical examination will assist in discovering the full nature and extent of her physical injuries from being shot. Denn would note that being shot may sound like a serious injury, but Pady was treated and released, so a physical examination is needed to investigate the gravity of her injuries. Denn would note that the physical exam is also proportional to the needs of the case because it would not be overly burdensome or expensive for Pady to comply, and the relevance of the results are crucial to Pady's claim for damages based on her physical injuries.

this should be a very short discussion, unless it's really an issue in the facts. Most of this s/b in the exam discussion below.

Further, Denn would argue that the mental examination is needed and within the scope of discovery because he believes that Pady is mentally unwell, and a mental examination would discover any mental issues that may have contributed to the claims in Pady's complaint and her quest for damages. Denn would note that because she seeks damages for the damage to her dogs, and he believes that Pady must be mentally unwell to use her dogs for online clout, her mental condition is at issue and thus relevant. Again, Denn would note that the mental exam is also proportional to the needs of the case because it would not be overly burdensome or expensive for Pady to comply, and the relevance of the results are crucial to Pady's claim for damages based on damage to her dogs.

On the other hand, Pady would argue that a mental examination is beyond the scope of discovery because she did not place her mental condition at issue, only her physical condition, and Denn's irrational belief that she is mentally unwell is without merit and irrelevant to any of the claims in the case. Pady would note that because her mental condition is not at issue, any mental examination is not proportional to the needs of the case. Pady would argue that she is not making a claim for any mental health issues, head trauma, or the like, so any further inquiry into her mental state is beyond the scope of discovery.

Further, Pady would concede that her physical condition is at issue in the case, and an examination is likely relevant and proportional to the needs of the case, but the physical examination must be limited to the injuries she

sustained from being shot. The specific injuries are not noted in the facts; however, if the injury is only to her leg, for an example, Pady would argue that a physical examination of her upper body is beyond the scope of discovery. Finally, Pady would likely argue that the doctor-patient privilege applies, and thus precludes the exams from being within the scope of discovery. However, as will be discussed further below, Pady put their physical condition at issue by seeking damages for their physical injuries, so the doctor-patient privilege is waived.

Pady is likely correct that the mental examination is beyond the scope of discovery, but Denn is likely correct that the physical examination is within the scope of discovery.

PHYSICAL/MENTAL EXAMINATIONS

✓ A party may compel another party to submit to a physical and/or mental examination if that party's (the examinee's) physical and/or mental condition is at issue in the subject litigation, if good cause is shown for the physical and/or mental examination, and if a court order for the examinee to submit to the mental and/or physical examination is obtained.

Here, again, Denn would argue that Pady must submit to both a mental and physical examination because Pady's mental and physical condition are at issue in the subject litigation, Denn has shown good cause for the examinations, and he obtained a court order for Pady to submit to the examinations.

Break these up: a. PHYSICAL CONDITION b. MENTAL CONDITION

First, Denn would argue that Pady's physical condition is at issue in this litigation because Pady seeks recovery of damages for her physical injuries from being shot, and her mental condition is at issue because Denn believes that Pady is mentally unwell because she is using her dogs for online clout. Denn would argue that a physical examination would result in relevant information because a physical examination will assist in discovering the full nature and extent of her physical injuries from being shot. Denn would note that being shot may sound like a serious injury, but Pady was treated and released, so a physical examination is needed to investigate the gravity of her injuries. Further, Denn would argue that a mental examination would discover any mental issues that may have contributed to the claims in Pady's complaint and her quest for damages. Denn would note that because she seeks damages for the damage to her dogs, and he believes that Pady must be mentally unwell to use her dogs for online clout, her mental condition is at issue and thus relevant.

Next, Denn would reiterate many of the same arguments to establish that good cause is shown to order Pady to undergo the physical and mental examinations. Denn would argue that good cause is shown to order Pady to submit to both examinations because both examinations would produce relevant results that relate to her claims for damages. Again, Denn would argue that there is good cause for a physical examination because it will assist in discovering the full nature and extent of her physical injuries from being shot, for which Pady seeks damages. Denn would also argue that good cause exists for a mental examination because Pady seeks damages for the

damage to her dogs, and Denn believes that Pady must be mentally unwell to use her dogs for online clout, so there is good cause for a mental examination to investigate the nature, extent, or even existence of any relevant mental conditions contributing to her claims.

On the other hand, Pady would argue that a mental examination is not warranted here because she did not place her mental condition at issue, only her physical condition, and no good cause exists for the mental examination because Denn's irrational belief that she is mentally unwell is without merit. Pady would note that she is not making a claim for damages for any mental health issues, head trauma, or the like, so any further inquiry into her mental state, especially based on baseless theories by Denn, is not warranted.

Further, Pady would concede that her physical condition is at issue in the case, and there is good cause for a physical examination, but the physical examination must be limited to the injuries she sustained from being shot. The specific injuries are not noted in the facts; however, if the injury is only to her leg, for an example, Pady would argue that there is no good cause for a physical examination of her upper body because she did not place her entire body at issue by seeking damages for her injuries. Finally, Pady would likely argue that the doctor-patient privilege applies, and thus precludes the exams. However, Pady put their physical condition at issue by seeking damages for their physical injuries, so the doctor-patient privilege is waived.

Finally, it is not disputed that Denn obtained a court order for the examinations, so that element is not at issue.

Therefore, Pady is likely correct that she does not have to submit to a mental examination, but Denn is likely correct that Pady must submit to a physical examination.

~~CONCLUSION RE: DENN'S MOTION FOR PHYSICAL AND MENTAL EXAMINATIONS OF PADY~~

- ✓ The court was correct to grant the motion for a physical examination of Pady, but the court was incorrect to grant the motion for a mental examination of Pady.

PADY'S MOTION TO COMPEL MENTAL EXAMINATION OF DENN

SCOPE OF DISCOVERY

- ✓ See rule above.

Here, Pady would likely argue that a mental examination is within the scope of discovery because Denn's mental condition is at issue since he has been irrationally angry that Pady did not accept their apology, Denn has

essentially been stalking Pady's home at all hours, and Denn has been harassing Pady's social media posts. Thus, Pady would argue that a mental examination would reveal any relevant mental issues that might contribute toward Denn's behavior, and the examination is proportional to the needs of the case.

better, but don't really need to give both sides.

On the other hand, Denn would argue that a mental examination is beyond the scope of discovery because Denn's mental condition is not at issue and would therefore not produce any relevant results. Further, Denn would highlight that Pady only seeks the mental examination for retaliation, which is in bad faith.

Denn is likely correct that a mental examination is beyond the scope of discovery, ~~and further analysis is not required, but will be briefly addresses for completeness.~~

just keep writing.

PHYSICAL/MENTAL EVALUATIONS

✓ See rule above.

Here, Denn would argue that a mental examination is not warranted because Denn's mental condition is not at issue, there is no good cause for the mental examination, and Pady did not obtain a court order for the examination. Again, Denn would highlight that his mental condition is not at issue because Denn is not claiming any mental issues, head trauma, or other related symptoms that would put their mental condition at issue, nor are there are any factual circumstances that would place Denn's mental condition at issue. Denn would highlight that Pady only seeks the mental examination for retaliation, which is in bad faith and insufficient to establish good cause. Finally, Denn would note that Pady did not comply with procedural requirements because she merely sent Denn a letter and made Denn an appointment with a psychiatrist, but failed to obtain or even try to obtain a court order. ✓

Pady would likely argue that a mental examination is warranted because Denn's mental condition is at issue since he has been irrationally angry that Pady did not accept their apology, Denn has essentially been stalking Pady's home at all hours, and Denn has been harassing Pady's social media posts. Thus, Pady would argue that good cause exists to conduct a mental examination, which would reveal any relevant mental issues that might contribute toward Denn's behavior.

Even if there is some validity to Pady's arguments, Pady did not comply with the procedural requirements of obtaining a court order, so Denn will not have to undergo a mental examination.

MOTION TO COMPEL

A motion to compel may be filed if one party is seeking some sort of discovery in good faith and the other party is either non-responsive, provides an insufficient response, or acts in bad faith. Prior to seeking court intervention by

Can a court compel Denn to undergo an examination that was never ordered by a court? You talk a lot about good/bad faith, but not about the lack of order.

filing a motion, the moving party must attempt to resolve the dispute with the other party in good faith. These efforts are commonly referred to as requirements to "meet and confer" in good faith to avoid court intervention. Should the meet and confer efforts be fruitless, and the moving party cannot avoid court intervention, the moving party must include those good faith meet and confer efforts in their moving papers. Acting in bad faith, or failure to meet and confer in good faith prior to seeking court intervention, may result in the imposition of sanctions.

Here, Denn would argue that the court was correct in denying Pady's motion to compel a mental examination of Pady because she clearly acted in bad faith by requesting a mental examination solely for retaliatory purposes. Denn would highlight that Pady's improper reasons for seeking a mental examination of Denn and filing a motion to compel was a waste of the court's time, as well as a waste of Denn's time and expenses that were likely spent opposing the motion. Thus, Denn would argue that the court should impose sanctions against Pady.

Pady would argue that she did not act in bad faith and attempted to meet and confer with Denn by sending a letter to Denn advising Denn of the scheduled visit, but Denn's refusal to attend forced her hand at seeking court intervention.

The court would likely impose sanctions against Pady for acting in retaliation, not following proper procedures for compelling a mental examination of a party, and filing the motion without attempting to avoid court intervention.

CONCLUSION RE: PADY'S MOTION TO COMPEL MENTAL EXAMINATION OF DENN

✓ The court was correct to deny Pady's motion to compel.

DENN'S MOTION TO COMPEL DEPOSITION OF PADY

SCOPE OF DISCOVERY

✓ See rule above.

✓ Here, the deposition of Pady, as the plaintiff who brought the claim, is certain to provide relevant information that is proportional to the needs of the case. The deposition is necessary to discover further information about Pady's physical injuries, damage to the dogs, and damage to Pady's online brand.

✓ Therefore, the deposition of Pady is within the scope of discovery.

DEPOSITIONS GENERALLY

Generally, a party in a civil case is limited to taking only 10 depositions. If the party needs to take additional depositions beyond the 10-deposition limit, that party must file a motion and seek permission from the court.

Here, there is no indication that Denn is anywhere near the 10 deposition limit, so there are no issues with taking the deposition for these reasons.

COMPULSORY APPEARANCE OF A WITNESS

If one party seeks to take the deposition of another party in the case, serving a notice to that party is sufficient to compel that party's attendance at the deposition. If a party seeks to take the deposition of a non-party, the party taking the deposition must serve a subpoena on the non-party witness, as a subpoena is required to compel the attendance of the non-party at the deposition, and mere notice is insufficient. Relatedly, a deponent's attendance is only one factor in the deposition itself. If the deponent appears for the deposition, but refuses to answer questions, repeatedly responds with evasive responses such as "I don't know" to all or most of the questions, or otherwise does not participate in the deposition in good faith, the party taking the deposition may treat the deposition as if it is essentially a non-appearance, and can file a Motion to Compel the deposition.

not really a rule but should be used in your analysis.

Here, because Pady is a party to the case, service of a notice is sufficient to take her deposition. Denn was not required to subpoena her or seek a court order to take her deposition. Denn would argue that although Pady appeared for the deposition, the appearance was in bad faith, or at least not in good faith, and is equivalent to a non-appearance. Denn would argue that Pady's refusal to answer any questions is the equivalent to receiving no responses at all, so this deposition should not count as completed, nor should it count toward 1 of the 10 allowed depositions.

this section should be beefed up with sections of your "rule." Don't forget the power of the word "because." You should use it a lot more.

MOTION TO COMPEL

See rules above.

Here, Denn would argue that a motion to compel the deposition of Pady should be granted because although Pady appeared for the deposition, the appearance was in bad faith, or at least not in good faith, and is equivalent to a non-appearance. Denn would argue that Pady's refusal to answer any questions is the equivalent to receiving no responses at all, so this deposition should not count as completed, nor should it count toward 1 of the 10 allowed depositions. Denn would also highlight that despite Pady's refusal to cooperate, Denn reached out to Pady in good faith to meet and confer to see if the issue could be resolved prior to court intervention, as required prior to filing a motion to compel. Denn would argue that Pady left Denn with no choice but to file a motion to compel the deposition and seek court intervention to complete the deposition of the party that the entire action stems from.

is this an issue here?

SANCTIONS

Failure to comply in good faith may result in the imposition of sanctions. Sanctions are commonly sought by a moving party to compensate them for expenses incurred related to the events or circumstances that the motion concerns, expenses related to time preparing the motion, expenses related to filing fees incurred to file the motion, and others.

Here, Denn would argue that the court should impose sanctions against Pady for the time, resources, and expenses incurred related to the deposition and motion to compel. For the deposition, Denn would argue that they are entitled to the cost of hiring a court reporter, reserving a conference room, gas money spent traveling to/from the deposition, and any other related expenses incurred for the taking of the deposition. Denn would further argue that the court should impose sanctions against Pady for the time and expenses incurred for preparing and filing the motion to compel.

The court is likely to find in favor of Denn and impose sanctions against Pady

~~**CONCLUSION RE: DENN'S MOTION TO COMPEL DEPOSITION OF PADY**~~

The court should grant Denn's motion to compel the deposition of Pady and impose sanctions against Pady.

PADY'S REQUEST FOR A JURY TRIAL

RIGHT TO A JURY TRIAL

The Seventh Amendment guarantees the right to a jury trial for legal claims that exceed \$20.00.

Here, Pady seeks damages for injuries sustained from being shot, damage to her dogs, and damage to her online brand. Pady's injuries required a hospital visit, which is sure to be in excess of \$20.00, in addition to her other claims for damages. Therefore, her claim is a legal claim that exceeds \$20.00.

why? You have to explain that hospitals are expensive, even a minor gunshot is serious, + \$20 could be reached even w/out a hospital overnight.

TIMELY REQUEST

A party must make a timely request or demand for a jury trial. A timely request is made if a party requests or demands a jury trial within 14 days after service of the last pleading directed to the jury-triable issue. If a request or demand is made after the aforementioned deadline, the court has the discretion to grant a request for a jury trial, upon the appropriate motion.

Here, Pady's request for a jury trial was not timely made because it was made 30 days after the last pleading directed to the jury-triable issue was served. However, Pady's request is not automatically barred, as the court has the discretion to grant a request or demand for a jury trial even if it is not timely made. If Pady files the appropriate motion with good cause shown, the court may still grant Pady's request for a jury trial.

will they? just need a little discussion on that issue.

LEGAL AND EQUITABLE CLAIMS

Legal claims refers to lawsuits for monetary damages, and a jury trial is guaranteed. Equitable claims refers to lawsuits for equitable relief, such as injunctive relief, and a jury trial is not guaranteed. If a party has both legal claims and equitable claims, a jury trial will commence on the legal claims first, then a bench trial will commence on the equitable claims, and the court is bound by the factual findings of the jury in the trial for the legal claims.

Here, Pady's claim includes both legal claims and equitable claims. Pady's claim includes legal claims because they seek damages for their injury, the damage to the dogs, and the damage to Pady's online brand. Pady's claim also includes equitable claims because Pady seeks an injunction to stop Denn from driving on her street and posting on Pady's video and posts online.

Therefore, if Pady files the appropriate motion and the judge chooses to exercises its discretion in favor of Pady's request for a jury trial, Pady is entitled to a jury trial on the legal claims, to be followed by a bench trial on the equitable claims, where the court will be bound by the factual findings of the jury in the trial for the legal claims.

CHOICE OF LAW

not @ issue here

In a federal civil action based on diversity jurisdiction, the applicable law is state substantive law and federal procedural law.

~~CONCLUSION RE: PADY'S REQUEST FOR A JURY TRIAL~~

The court has the discretion to grant Pady's request for a jury trial on her legal claims for their injury, the damage to the dogs, and the damage to Pady's online brand.

END OF EXAM

2)

(1) Did the Court rule correctly on Danni's motion for failure to state a claim upon which relief can be granted?

WELL-PLEADED COMPLAINT

✓ A complaint requires (1) a short statement of jurisdiction; (2) a short statement showing the pleader is entitled to relief; and (3) a demand for judgment for relief. [The complaint must plead with particularity those circumstances establishing fraud.] *I would give this its own heading.*

✓ Here, Perri sued "under a fraud theory." Thus, Perri was required to plead with particularity the circumstances establishing fraud. However, Perri's complaint merely states "Danni lied about not having pets," and "there were no other facts contained in the complaint as to fraud." Without specific facts supporting Perri's claim, Perri's fraud claim is conclusory and does not meet the requirements of a well-pleaded complaint.

Therefore, Perri's complaint did not satisfy the particularity requirement for fraud pleadings.

MOTION FOR FAILURE TO STATE A CLAIM

A party may make a motion for failure to state a claim upon which relief can be granted at any time prior to or at trial.

✓ Here, Danni will argue that Perri failed to state a claim upon which relief can be granted because of Perri did not plead with particularity those facts establishing fraud. Danni will argue Perri's claim only concluded "Danni lied" without offering supporting facts. Perri's entire fraud theory is based on a single sentence, and thus does not come close to pleading with the requisite particularity. Danni will argue this failure is fatal to the pleading, and thus Danni's motion for failure to state a claim must be granted. Danni will also argue that they filed the motion for failure to state a claim before the trial was over, thus making a timely request. Perri will likely counter that the trial court allowed the complaint to see the end of a jury trial, and thus the claim was sufficiently plead. However, Danni's argument is likely the winner: Perri did not plead with particularity for her fraud claims, and thus Danni's motion for failure to state a claim should have been granted. Furthermore, just because a court made a ruling does not mean the ruling was correct.

- is this in the facts?

Therefore, the Court erred when it denied Danni's motion for failure to state a claim.

CONCLUSION

3)

1) P-JAY WON JT AGAINST DANGEROUS CREATURES

PILAR'S MOTION FOR PARTIAL SUMMARY JUDGEMENT

✓ MOTION FOR PARTIAL SUMMARY JUDGEMENT: A motion for partial summary judgement may be granted as to some but not all of the claims if from pleadings, affidavit, and discovery material it appears there is no genuine dispute of material fact and the moving party is entitled to judgement as a matter of law.

✓ ISSUE PRECLUSION: A valid final judgement where the issue was actually litigated and essential to judgment may bar litigation of the same issue.

✓ AS A SWORD: When used offensively, the party using the issue preclusion generally must have been party to prior action or in privity. However, courts will allow it where it is fair to the defendant to do so.

Here, Dangerous Creatures (DC) was found negligent in the prior action and PJ (PI) was awarded damages by the Jury. PI can use the previous negligence action as a sword in this case against D. Here, PI can use the previous action as a sword against D because D was already found to be negligent in the jury trial against PJ. There was a ✓ valid final judgement in the form of a jury verdict in PJ's favor. The jury found DC negligent against PJ due to the zoo's negligent release of the otters. Th negligent release of the otters was due because they let the otters continue to run around after they broke loose in order to create interest with the "otter cam". Finally, the issue of negligence would have been essential to the judgement of the negligence against DC. As the defendant in the previous action, DC was a party so the courts will consider it to be fair for Pilar (PI) to use the previous action as a sword against them.

✓ Here, PI can use a partial motion for summary judgement to focus the action solely on damages since the remainder of the case was already heard an determined. The court will likely agree that the issue of negligence is precluded here leaving no dispute of material facts as to the negligence that occurred.

Thus, the court would find that Defendant is negligent for purposes of this second, action leaving only the issue of damages to be determined by the court.

Don't forget to answer the call: did the court err?

2) DANGEROUS CREATURES WON JT AGAINST P-JAY

DANGEROUS CREATURES MOTION FOR PARTIAL SUMMARY JUDGEMENT