

MONTEREY COLLEGE OF LAW

Civil Procedure

Final Examination

Spring 2017

Prof. B. Cooper

INSTRUCTIONS:

There are three (3) questions in this examination.

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

**CIVIL PROCEDURE - SPRING SEMESTER**  
**EXAM QUESTION #1**  
**Prof. Cooper**

**[60 minutes]**

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".

The CEO 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.

**CIVIL PROCEDURE - SPRING SEMESTER**  
**EXAM QUESTION #2**  
**Prof. Cooper**

**[60 minutes]**

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 during which 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. Meline was aware of this information in 2005; and 4) given this, Dr. Grady was liable for professional negligence for failing to test the three (3) Plaintiffs for allergic reaction prior to performing surgery.

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 - SPRING SEMESTER**  
**EXAM QUESTION #3**  
**Prof. Cooper**

**[60 minutes]**

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 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 revenue loss in excess of \$80,000.00.

James filed a lawsuit in Federal Court one week after the accident 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.

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 measures she may take in an attempt to correct her mistake.

1) ~~Interpleader~~: An equitable device, . . . .

Question #1

Big Bank (CA) v (Interplead) Horizons, CA (Anton & Betty), Chris, Darla and Gems

**Issue:**

Joinder

FRCP 22

28 USC 1335 (Statutory)

**Rule:**

**Joinder** is determining the parties to be joined as either plaintiffs or defendants.

**Interpleader FRCP 22** requires complete diversity, *an*

**1335** is minimal diversity

**Analysis:**

Here, Big Bank is attempting to join Horizons, Chris, Darla and Gems under FRCP 22, Interpleader as Big Bank is the stake holder and the amount will be fought over by the four that they had interpleader



A party may bring a claim under **FRCP 22** when there is complete diversity, with the amount of the controversy over \$75K and does not interfere with venue, SMJ. Here, Big Bank from California is impleading four different claimants with at least two of them diverse from each other. Although the the amount did not give a precise total after the sale of the four sculptures, generally Horizons sells the sculptures at \$100k each which is to assume that the total amount is \$400K, meeting the threshold amount of controversy. However, under FRCP 22 it is not complete diversity as Chris, Darla, Gems are from the same state, but that Horizon is from the same state of CA, they are diverse from Big Banks. But here, the analysis is towards the claimants. Next, does the interpleader destroy or disrupt venue. Between Big Bank and the four, the defendants who could be potential identified as Chris, Darla and Gems all in Florida, where they all reside. So under FRCP 22 they meet the venue requirement. Service of process is next to examine and here the facts are silent. For service of process under FRCP 22 it is required that the Service be made within the jurisdiction of the court. (state in which dist. sits)

Under FRCP 22 the interpleader action may fail under diversity and possible venue. It does meet the amount in controversy but again is not allowed.

Statutory 1335 may assist Big Bank with the interpleader action as it requires minimal diversity of having at least one claimant diverse from at least one of the others. Horizons is from California and the others are from Florida, so minimal is met. Next the amount of controversy under statutory is more than \$500. Here, we can assume with the sale of all four sculptures totaled \$400k. There is a deposit required which is a 100%. Big Bank is assumed to have that much covered considered their name "Big Bank." Next, service of process is nationwide and although the facts are silent it can reach everyone in the party. lastly, venue. Venue is not an issue.

two claimants must be div.

28 USC 1397, where any claimant resides

**Conclusion:**

The statutory interpleader would be proper. *correct,*

Question #2

**Issue:**

Necessary and Indispensable FRCP 19

*(Modern v. Traditional view of "necc" "indis." parties v. looking at result & non-jurisdiction)*

**Rule:**

*19(b)*

An absentee who's interest would be harmed if not joined if the court was to proceed without them or the plaintiffs (Big Bank) would be subject to multiple or inconsistent obligations is examined under FRCP 19. (1) What prejudice (2) Can the prejudice be lessened or avoided (3) Would there be adequate judgement and (4) would there be alternate remedy (State Court)

**Analysis:**

Here, Big Bank will argue that Darla is a necessary party because her interest was at 45% of the total amount of \$400K. If she is not joined Big Bank could be subject to multiple or inconsistent obligations. Next we must examine Feasibility. Is there PJ, SMJ and venue issues. Here, it would not be feasible because of PJ, Darla left to India to study yoga having sold all of her belongings and deleted her social media account. It appears that Darla may have changed her intended domicile to the country of India. Furthermore, she told Chris that she "may or may not return" indicating her intent to be domiciled in India.

*under, so US dan. fl*

Under FRCP 19 b could the court continue to proceed in "equity and good conscience" without the absentee or would the interest of the Plaintiff be harmed if dismissed. Here, Big Bank's interest may not be harmed because 45% of the total amount is owed to Darla and if

Chris were to get 90% of the shares since they were business partners and had some sort of relationship, the Bank could argue that Darla would have a cause of action if she were to return and then sue Chris, alleviating the bank. Gem R us will still be able to claim their 3%.

Darla could also sue Chris in the state court of Florida since she and Chris were residing and conducting business. However, since Chris was scheming on cutting Darla out of her proceeds, Chris may attempt to move from another state!

Gem R us interest may also be harmed since Chris and Darla had a contract agreement of 20% of the purchase price, substantially lowering the amount of Chris and Darla's interest.

On the other hand, Darla's interest of 45% would be affected if Chris were to receive her share. Chris had already planned on nefariously removing Darla from her share, so Chris would sabotage her share if she were to return and discover that she was owed that amount. If that were the case then Big Bank could be later sued and subject to multiple and inconsistent obligations (assuming no preclusions issues were raised such as Collateral Estoppel-isse preclusion).

Although the bank filed its interpleader action a day prior to Darla's departure she should have known that the sculptures had sold for a substantial amount and did not question about her shares to Chris prior to her departure. Bearing in mind that she may have disregard her interest and therefore could not be prejudice at. In addition, Yoga has a simple philopshy of living life simply and that Darla's departure could be interpreted as abandoning all her rights and interest, as she had cut off her ties to her friends when she cut off her social media accounts and selling all of her belongings. In additon, India is considered a 3rd world country and that giving away her possessions and not questioning

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Chris about her share of the profit before her departure was abandoning her interest or stake in the claim

= poss dismissal w/ prej, involuntarily, under Court's considerable (and rising) case management powers

**Conclusion:**

Because Darla had left the country and did not inquire about the sales of the sculpt she knew of should have known would have been sold, she had abandoned her rights and interest in the party therefore the court could continue in "equity and good conscience" in addition to a remedy for Darla to sue Chris at a State court.

Excellent.

**END OF EXAM**

2)

1.

**FRCP - 26 - Discovery**

Parties are allowed to obtain discovery (information) which is not privileged, Relevant to the claims and defenses, and reasonably calculated to lead to other admissible evidence.

+ proportional

**FRCP 36 -Request for Admissions**

or "... cannot admit or deny ..."

Request for admissions are a discovery tool used by attorneys that have the responding party affirmatively Admit or Deny allegations that are given to the opposing Party. Request for admissions must be answered within 30 days and failure to do so, is an automatic admission to the question for all purposes to include trial. Request for admission can only be served on a party to the litigation.

go to negligence

in this case, Dr. Meline failed to admit or Deny the two questions she was served, therefore this is considered an automatic admission on her part. Both questions are with regards to her conduct and the liquid protein. Grady's attorney would make no effort to obtain these request for admission mostly due to the fact Dr. Meline admitted these questions by default. During the Teleconference that Dr. Meline's attorney told Grady's attorney that Dr. Meline did not in fact recall whether any changes had been made to the protein formula, and could not recall whether he tested Grady for an allergic reaction would have no effect on the admissions as they would have been admitted by default. *good.*

These admission will become more important during Grady's MSJ - Rule 56 and his preclusion to the Doctors Liability discussed below. *nice touch.*

2.

### FRCP 34 - Request to Produce Documents

The facts indicate that Grady Timely propounded RFA's and also propounded a RPD (34). The RPD is also a Discovery tool used to request the inspection and examination of relevant documents and / or other tangible items, or to inspect property if applicable.

Dr. Meline has asserted that her formula is considered Intellectual property and has asserted that it is not in issue. If the court has granted a Motion to Compel which would have required the attorneys to meet and confer in good faith in an attempt to work through discovery issues and problem solve prior to the motion to compel. In this case, Dr. Meline would seek to obtain a protective order preventing the disclosure of her intellectual property. *or limiting to use in lit only given relevance*

### FRCP 26(c) - Protective Orders

*26(c)(1)(a) discussed in class.*

Protective orders are granted to parties to prevent Embarrassment, Annoyance, Oppression or undue cost and Delay. The court has the power to require parties to agree to most anything under an abuse of discretion standard.

The court might meet with the parties similar to a Rule 16 - Pretrial situation and possibly negotiate in an attempt to try and find a suitable resolution to the information requested by Grady. The court can place limitations on discovery, order that no discovery be provided, conduct in camera reviews to determine if the information is of consequence. This information has been the subject of three prior lawsuits and unless Dr. Meline could

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provide a very good reason why Grady should not get the discovery requested then the court would likely grant the motion to compel.

3.

**Non-Mutual Issue Preclusion (Sword) - Collateral estoppel.**

The facts indicate that Grady is going to use a preclusion argument to support is FRCP 56 - Motion for Summary Judgment.

Issue preclusion is when an issue has been previously litigated in the past and court prevents the parties from relitigating the issues. For issue preclusion to be effective the court looks to several factors.

Issue preclusion factors must include, identical issues of law or fact; Must be necessary to the litigation; a Full and Fair opportunity to litigate and a Final Judgment.

Dr. Meline has been sued by elite athletes for professional negligence due to allergic reactions to the liquid protein, relating to surgeries performed in 09, 10, and 11, so the issues are identical. These issues were very necessary to the litigation, and Dr. Meline consolidated the three lawsuits in California state court for jury trial purposes. There was a finding by the jury after extensive expert testimony in 2013, so the opportunity to litigate issue is met and there was a final jury finding of liability for professional negligence for failing to test the three plaintiffs for allergic reaction prior to performing surgery which is the same allegations in Grady's case.

Based on the above analysis, Grady would be able to use Issue preclusion to this point. But Grady is attempting to use nonmutual issue preclusion as he was not the Same Party, with

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*Solid grasp of law, solid analysis*

the Same Issue and underwent a final judgment as he would need for Res Judicata - Claim Preclusion.

The court further analyses Non-Mutual Issue Preclusion by looking at whether Grady could have Joined the original litigation, or was this a "Wait and See" situation. Dr. Meline was found negligent in 2013 and Grady did not seek treatment until 2014, so he was not able to Join. The court looks to see if this would be "Fair." Based on the facts the court would find it very fair as Dr. Meline was on notice that this was an issue and she continued to use this treatment without Testing Grady and who knows how many others. The court also considers if the defendant had adequate reason to litigate. In this case Dr. Meline could not have had more reason to litigate this issue due to her intellectual property being questioned and the dollar amount at risk. Dr. Meline might argue that she only had one trial on the issue, but it was consolidated and she had her day in court. Lastly the court looks to see if there were any prior inconsistent judgments, and there does not seem to be any based on the facts.

*cases?*

Based on the above facts, Grady should be able to assert his preclusion arguments against dr. Meline. *affect? on neg? on damages?*

4.

**28 USC 1291 - Final Judgment**

The court of appeals will have jurisdiction over any appeals from final judgments entered by district courts.

Grady could challenge the court by filing:



**28 USC 1292(b) Interlocutory orders**

Controlling issue of law, materially further the termination of the litigation and request that a judge certify the order to authorized an interlocutory appeal.

**Collateral order Doctrine** would likely not apply as this issue is not wholly separate from the claim. In this case, Darla's interest (45% potential) would be harmed, therefore would likely be a necessary party.

**Writ of mandamus** - Good luck Writ - Hell no writ ✓

Ran out of  
time - ...

1291  
1292 (a) mi  
1292 (b) cert of law  
collat order doc  
writ

**END OF EXAM**

likely none apply, proceed  
to ADR or trial w/  
right to appeal post verdict.

3)

1.

**FRCP - 26 - Discovery** ✓

Parties are allowed to obtain discovery (information) which is not privileged, Relevant to the claims and defenses, and reasonably calculated to lead to other admissible evidence.

**FRCP 33 - Interrogatories** ✓

Interrogatories are a Discovery tool and can be served on a Party to the cause of action. Rogs cannot be served on Non Parties and are limited to 25 questions typically.

**FRCP - 35 - Physical Evaluation** ✓

Under Federal rules the party seeking to obtain a medical evaluation, either physical or mental must obtain a court order. This issue needs to be in controversy as a necessary issue and there has to be good cause for the evaluation.

*Schlagerhaus v. Holder analysis!*

James suit does not raise an issue of his medial condition nor does it raise any issues of him not being able to responded or turn his boat or failing to turn his boat. It is alleged that Howell, zig-zagging back and forth across the marina channel and as he approached Glenn is, Howell made a sudden turn towards Glennis and in response, James steered Glennis left away from the sailboat and towards the marine dredge. this maneuver avoided the collision but resulted in Glennis striking the dredge.

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Willie a non party witness said he saw James "shaking his arms repeatedly in an alternating fashion" in the 90 seconds prior to the collision. Hank maintained that James failed to follow his navigation instructions issued over the radio in the same 90 seconds period and if he had, then no collision would have occurred. James claims that his radio was working and he didn't hear any instructions from Hank.

Even if James was shaking his arms due to his known peripheral neuropathy he was able to avoid the collision and doesn't seem to think his medical condition had anything to do with the accident. The harbor is implying that his medical problem did in fact contribute to his accident and is requesting the exam. Rog 5 goes along with the idea of the medical exam but it is over the last 10 years which the court would likely find is excessive.

The court would likely order James to submit to a medical exam since the medical condition is going to be put in issue and it was a February morning at the harbor at a local Marina and February tend to be colder even though there are no facts to indicate climate conditions at the time of the accident. *Sand reasoning.*

2a

### FRCP 30 - Oral Deposition

Willie was served with a notice of deposition with a time, date and location of the deposition, but Willie is not a party to this action. Unless this notice was accompanied with a FRCP 45 - Subpoena from the court ordering Willie to attend at the date and time requested in the Deposition, then the lawyer would be correct and nothing "bad" could happen to Willie to he failed to appear as noticed. IF he was served with a Subpoena, and Willie failed to show up as noticed, he could be held in contempt of court and subject to Jail or a fine.

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2b

Willie's attorney could discuss the options with Willie and notify willie that it might be best to see if there was a time and place within the local area that willie could be deposed, with work days and hours in mind and what would work best for Willie. Once Willie agrees to the proposed course of action, the attorney should get it in writing from willie and "Paper" his file. Then once that is done the Atty could contact the other side and try to schedule an evening time or weekend time convent for Willie and assuming the atty was authorized to accept service for Willie, so the opposing side doesn't have to get a process server to get willie served, would ultimately save money and time for both sides. excellent.

3.

### FRCP 13(a) - Compulsory Counterclaim !

A compulsory counterclaim is a claim filed by the opposing side of an action at the time of your initial responsive pleading from anything arising from the same transaction or occurrence. This must be done at the time of the response and is a "Use it or Lose it" type of claim. When James filed his lawsuit against the Marina one week after the accident against the marina for negligence, the marina promptly filed its answer to Complaint, they effectively waived any Counterclaims they might have had for James' alleged damage to the dredge in the amount of \$300,000. ✓

The marinas attorney could file a motion to amend her Answer and hope the Court would grant it. The court would take into consideration how Timely the Marinas motion to amend was but the facts indicate that at least 30 days has passed based on the request for Rogs, the Request for Medical Exam and the Motion to compel James to provide that information.

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The court would likely deny the Marian's Attorney to Amend her Answer for untimeliness.

**FRCP - 18 - Joinder**

Any party that asserts a claim, counterclaim, cross claim or Third Party Claim may join any claims they may have against an opposing party.

The Marina's Attorney might consider attempting to bring in Willie as a Third Party Defendant under an **FRCP 14 - Impleader** with him being negligent and liable for indemnity or contribution to the marina, but this would leave Willie "out to dry" so to speak as he is an employee of the Marina and they would effectively be suing him for liability which he could probably not pay and the Marina would likely be liable to James.

"you're not limited by the Law, you're limited to the art of persuasion"

Great issue spotting, ok to great analysis throughout - nicely done.

High score for this

**END OF EXAM**

essay Q - be proud of the client - well done