

Question 1 (33 points total, 3 points each)

- (A) \_\_\_ False. The remedy under R. 21 is never dismissal and moreover, under R. 20, a single plaintiff can sue multiple defendants so long as the claims arise from the same transaction or occurrence and involve common questions of fact and law, as would appear to be the case here. Once plaintiff is suing CRU R. 18(a) allows her to bring any claims she may have against that defendant even if, as appears to be the case here, the claim is not related to the other claims in the case.
- (B) \_\_\_ True. Under R. 12(h)(1) a party that files a pre-answer motion is obliged to include any “disfavored” defenses such as the defense of improper venue. Having failed to include that defense in its pre-answer motion GEI has waived the defense unless it could show, as is unlikely, that the venue defense was not “available” at the time it filed its pre-answer motion.
- (C) \_\_\_ False. A party seeking a TRO is required per R. 65(b)(1)(B) to try to give notice to the opposing party. Thus, although a TRO will be more appropriate than a preliminary injunction if counsel for Leeper cannot give notice to Wayne, in the available time frame, a choice to avoid even trying to give notice is not an appropriate reason for choosing to seek a TRO rather than a PI. (Alternatively, full credit for arguing that emergency situation is such that even an attempt to give notice should not be required).
- (D) \_\_\_ False. Once CRU has filed a R. 13(g) cross-claim against GEI, GEI is authorized, per R. 13(b), to file any counterclaim it may have against CRU, even if (as appears to be the case here) the counterclaim does not arise out of the same transaction or occurrence as CRU’s claim against GEI. Neither the fact that GEI has a counterclaim nor the fact that GEI seeks injunctive relief require GEI to seek court permission before filing its claim.
- (E) \_\_\_ False. Bell v. Twombly states clearly that the quoted language from Conley should no longer be relied on by courts. Instead, because even reading the complaint in the light most favorable to Plaintiff it fails to state any claim at all against Robyn, the court should dismiss that count of the complaint albeit with leave to amend.
- (F) \_\_\_ True. This is a proper use of the 12(b)(6) motion to dismiss part of a claim because the complaint, even read in the light most favorable to the non-moving party, fails to state a claim for punitive damages. The law of Nirvana does not allow punitive damages for a breach of contract claim.
- (G) \_\_\_ True. Under R. 11(c)(2)’s “safe harbor” provision no R. 11 motion can be filed with the court until the Estate of Leeper first serves the motion on GEI and gives GEI a chance to voluntarily withdraw its allegation within 21 days. If after 21 days GEI refuses to

withdraw the allegation it would be appropriate for Leeper to file the R. 11 motion in court, arguing per R. 11(b)(3) that the Answer denies adequate evidentiary support, because the “upon information and belief” language does not provide total protection for filing pleadings that are unfounded.

- (H) \_ False. Because discharge in bankruptcy is an affirmative defense per R. 8 that defense should have been raised in GEI’s Answer. However, while the time for amending “as a matter of course” per R. 15(a)(1) has run, in that more than twenty days have passed since GEI filed its Answer, GEI can still seek permission to amend the Answer under the R. 15(a)(2) standard (amendments should be liberally granted when justice so requires).
- (I) \_ True. The court should deny Defendants’ motion for summary judgment because, having considered the asserted facts and relevant law, the moving party (defendants) have failed to meet R. 56(c)’s requirement of showing that the moving party is entitled to judgment as a matter of law. Leeper is not entitled to summary judgment, because she filed no cross-motion for summary judgment, but had she filed such a motion the court could have granted partial summary judgment to the effect that Leeper’s illegal immigration status does not eliminate her claims.
- (J) \_ False. Under R. 11(b)(3) both client and attorney can potentially be sanctioned for making statements of fact that are not adequately supported by evidence. An attorney can not simply rely on his client’s statement but must sometimes do additional research to ensure that the client’s statement was warranted, so could possibly be sanctioned here if a court found reliance on the client was not reasonable.
- (K) \_ False. If Leeper can show that the motion for summary judgment was not adequately supported by fact or law, or that it was filed for improper purposes, Leeper will have met the requirements of R. 11(b)(1) - (3) and can potentially prevail on a motion for sanctions against both defendants. However, the mere fact that Leeper prevailed on the motion for summary judgment does not mean that Leeper can necessarily show that defendants motion for summary judgment was so weak as to support a R. 11 finding against defendants.

Question2 (39 points)

A. (8 points)

- (1) good idea to call or write
- (1) don't want to respond to request as written
- (1) not responding at all is terrible idea - could be sanctioned
- (1) could simply object - that is plausible
- (1) if we will want PO will need conversation anyway
- (2) best to be proactive, try to work out compromise, save time & \$ & reputation
- (1) letter may be good in addition to or in lieu of conversation

B. (31 points)

- (1) PO covered by R. 26(c); standard
- (1) We'll need to certify good faith attempt resolve, R. 26(c)
- (1) We could try to argue that discovery entirely prohibited, R. 26(c)(1)(A) but not good idea - won't get
- (1) instead should seek to limit scope discovery, R. 26(c)(1)(D)
- (1) summary arguments why discovery sought is excessive
- (2) Relevance, R. 26(b)(1) standard
- (5) Arguments why what they seek is not all relevant to this crane accident, in terms claims against GEI (as opposed to CRU), time, types accident, conversations with all sorts of persons, can cite Quinby
- (2) Undue burden standard, R. 26(b)(2)(B) & (C)
- (5) Here burden very high in terms cost, time, business disruption (details electronic/paper issues); although P seeks millions, burden high relevant to case value; GEI not poor but still.. Argue GEI not at fault for changing systems.
- (2) AC or other privilege, R. 26(b)(1) – some documents requested could be privileged and thus protected
- (3) Work product doctrine, R. 26(b)(3), define and explain some documents could be covered and should not have to be produced absent showing of need
- (2) Printing would be extra burden and is not required per R. 34(b)(2)(D) & (E)
- (5) We should propose to provide: documents specifically related this accident or others specified in complaint or previous crane accidents in recent years e.g. 2. We would provide privilege log for ac & wp documents. Propose cost shifting. Can cite Quinby.

Question 3 (28 points)

\_\_ (8) Describe binding arbitration, e.g. parties select arbitrator(s); presumably must pay arbitrator, arbitrator may have special expertise, privacy of hearing, no public precedent, possibility to design own rules and gain streamlined process, virtually no appeal, arbitrator may be less likely grant dispositive motion

\_\_ (1) Intro: two issues – do we prefer? Would plaintiff likely agree to what we want?

\_\_ (3) cheaper? Maybe maybe not, considering cost of arbitrator

\_\_ (3) quicker? Maybe, but dates set by court are not bad, not clear arbitrator could do better, and why does a D even want speed?

\_\_ (3) expertise? May well be good for us; possibly eliminate juror sympathy, but how strong is our case and what do we know about judge/jury?

\_\_ (2) privacy - could be helpful here (why) but much may well have become public already

\_\_ (1) likely lack appeal - not so good a thing if risk averse

\_\_ (1) lack precedent - not a big deal

\_\_ (2) so, not necessarily any great advantages for us, or at least depends on info we don't have like who is judge/jury

\_\_ (3) Would P want? Quite possibly not, especially version we would want; they may want jury, discovery, publicity, free neutral

\_\_ (1) but if we want it probably does not hurt to ask