

Kern County College of Law

CIVIL PROCEDURE II

Final Examination

Spring 2024

Prof. L. Peake

Instructions:

There are three (3) questions in this examination.

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

Question #1

Mercedes, a Nebraska domicile, is the president of a Kansas corporation called, "Mercedes Magic Mushies" ("MM") which grows Class One mushrooms in Kansas using "Bug Death, a pesticide made by Samule, an Idaho domicile, in Sam's garage. Sam ships the Bug Death ("BD") to MM in Kansas, where MM has its home office and a website that advertises throughout the USA. Class One mushrooms are illegal under U.S. Federal law and state laws of Kansas, Idaho and Nebraska.

MM shipped some of its Bug Death grown mushies to Lidia, also a Nebraska domicile (and also Mercedes' roommate). Lidia does business as "Lit By Lidia" ("LBL"), selling various mushroom produces over the Internet, including MM's mushies, to Idaho. Alondra, and Idaho domicile, purchased mushies from Lidia, which LBL shipped from Nebraska to Idaho.

Elvira, a California domicile, while visiting Alondra in Idaho, found and took some of Alondra's mushies and became ill. Following a week's hospital stay (incurring medical expenses of over \$80,000), Elvira is now staying in Idaho indefinitely until she is well enough to return to California.

Elvira hired David, and Idaho attorney working for his lawyer uncle, to file suit in Idaho District Federal Court against Lidia dba "Lit By Lidia" and MM, Inc., asserting both Idaho state law negligence and product liability claims (including based upon violation of Federal pesticide standards), and a Federal law Racketeering and Corrupt Organizations Act (RICO) claim, with the suit assigned to Judge Daniel Patrick. The complaint as filed asserted claims seeking to obtain class action certification on behalf of Elvira and all others residing in the United States who claimed to have suffered bodily injury, property damage or wrongful death loss of society and comfort, with David requesting appointment as the attorney for the class. The complaint asserted upon information and belief that the class would carry a value in excess of \$1,000,000 and have over 100 members.

MM, Inc. and Lidia have filed opposition to David's request for class action certification.

How should Judge Patrick rule on David's request for class certification?

Question #2

Assume all the facts contained in Question #1 along with the following:

After successfully serving the summons and complaint upon MM, Inc. and Lidia, both of such defendants impleaded Samuel as the maker of "Bug Death" as a third party defendant and Alondra for negligence in allowing access to the mushies to Elvira; and after initial FRCP 26 disclosures, Plaintiff Elvira's attorney, David, served requests for admissions to MM, Lidia and Sam asking each to admit the following:

"Admit that the mushies ingested by Plaintiff Elvira as obtained from defendant Lidia by Alondra contained Bug Death so as to cause injury to Elvira."

David served a demand for production of documents to MM, Lidia and Sam requesting that each produce:

"All document substantiating any response to the requests for admissions served herewith that support any response which is not an unqualified admission."

MM and Lidia responded to the request for admission with, "Admit." Sam responded with, "This responding party lacks sufficient information and/or belief to admit or deny this request."

MM's attorney, Max Mendez, and Lidia responded to the request for production with, "This responding party has no documents responsive to this request, as an unqualified admission has been given."

Sam, however, produced numerous emails and an invoice to MM, Inc. reflecting prior sales of Bug Death to MM, including emails sent to and from Sam's attorney regarding possible retention on an expert for Sam on the potential that Bug Death caused Elvira's injuries. Sam's attorney, James, while preparing for Sam's deposition, found that Sam's secretary had erroneously included the emails in Sam's document production, and directed a letter to David demanding return within five days of the emails and any copies of the emails. David did not respond within five days, and on the sixth day James brought a motion before Judge Patrick demanding that David return all the emails and copies and be prohibited from referencing them or their contents at trial, and for monetary sanctions against both David and Elvira.

How should Judge Patrick rule on James' motion?

Question #3

Assume all the facts contained in Questions #1 and #2 along with the following:

Following the pretrial conference on the Elvira v. MM, Inc. et al. matter, a jury of six individuals was seated. On the ninth day of trial, Lidia called to the stand as her first witness P. Maxwell, an individual who had not been included in Lidia's initial disclosure or pretrial conference witness list who Lidia immediately began to have testify as Lidia's LBL foreman that invoice dates prove Bug Death was actually NOT in the shipment of mushies that LBL sold to Alondra that Elvira ingested. Lidia did not discover P. Maxwell's use or ability to so testify until the day before trial started when Lidia was preparing for trial.

Shortly after P. Maxwell took the stand and began testifying, Juror #6, T. Poe, raised his hand and told Judge Patrick, "Your Honor, I know this guy - he's my former boyfriend."

David, on behalf of Elvira, began checking Lidia's witness list when P. Maxwell took the stand, and upon not seeing P. Maxwell's name listed, and hearing Juror #6's statement about T. Maxwell, made the following objections and motions to Judge Patrick:

1. To preclude witness P. Maxwell from testifying further;
2. To specifically preclude P. Maxwell from testifying further that Bug Death was not in the mushies Elvira ate as Alondra obtained from Lidia and to strike such testimony;
3. To excuse Jury #6, T. Poe, from sitting as a juror; and
4. For a mistrial.

How should Judge Patrick rule on David's motions?

ANSWER OUTLINE - Spring 2024- Prof. L. Peake

Question #1 Answer Outline

Issue: Whether class certification should be given under FRCP 23

Rule: Class certification under FRCP 23 should be given where four conditions are present: Commonality, typicality, numerosity and adequacy of representation of the proposed class by the named class representative and attorney for the class.

Analysis/application:

Commonality:

Here, the complaint proposes the class be composed of all U.S. citizens suffering any of the following types of damages: bodily injury, property damage or wrongful death loss of society and comfort.

Plaintiff Elvira has sustained bodily injury and medical specials, but not property damage nor wrongful death loss of society and comfort.

Elvira will argue that her bodily injury and medical expense claims yield sufficient commonality to encompass unnamed class members asserting claims for property damage or wrong death loss of society and comfort. Elvira will likely also argue in the alternative that a subclass should be allowed as to property damage or wrongful death loss of society and comfort claims, if the court feels necessary, and to provide Elvira with sufficient time to find one or more named class representative plaintiffs as to such damage claims; or, in the alternative, that Plaintiff be allowed to amend her complaint to drop from the proposed class any members not limiting their claim to bodily injury.

MM and Lidia in opposition will most likely assert that there is a fatal lack of commonality where, as here, Elvira's claim is only for bodily injury, and not for property damage nor loss of society and comfort from wrongful death.

As to the element of commonality, it would appear more probably than not that such element is not met by Plaintiff Elvira's complaint as pleaded.

Typicality:

The element of typicality is often considered to be subsumed by the element of commonality (that there exist one or more common questions of fact or law among named and unnamed class members), with typicality testing whether the position of the named plaintiff is sufficiently similar to the position of unnamed class members.

Here, while Plaintiff's class action for bodily injury is an FRCP 23(b)(3) claim for monetary damages as would unnamed class members' claims for property damage and loss of society and comfort, the nature of such damages is so distinct from bodily injury claims, particularly as to causation issues, so as to undermine the extension of Elvira's representation as the sole class representative to such claim.

Thus, it appears that the proposed class as to which certification is sought does not meet the test of typicality.

Numerosity:

For numerosity to be present in an FRCP 23 class action, there must be sufficient anticipated class members such that joinder of all class members is impracticable.

Here, over 100 members are assertedly included in the class, which should be considered as sufficient to meet the element of numerosity under FRCP 23(a)(1).

Adequacy of Representation:

FRCP 23 required that both the named representative and the attorney for the class be capable of providing adequate representative for the class.

Here, Plaintiff Elvira's claim is limited to bodily injury, while her complaint seeks certification of a class that extends to individuals sustaining either (or both) property damage or wrongful death lack of society and comfort. Adequacy of representation by Elvira for the scope of class members sought would not appear to exist.

In addition, Attorney David, an attorney working for his lawyer uncle in Idaho, would need to be able to convince Judge Patrick that he has sufficient experience and means to pursue a class action involving over 100 unnamed class members and exposure in excess of \$1 million.

It does not appear from the information provided that the element of adequacy of representation is met as required by FRCP 23(a)(1).

Whether Class Action Fairness Act is available to Plaintiff Elvira to certify the proposed class:

Rule:

The Class Action Fairness Act (CAFA: 28 USC 1332, 1453, 1711-1715) provides for certification of a proposed class action where minimum diversity is present between the named class representative and any defendant; over 100 class members will be involved as plaintiffs; and over \$5,000,000 exposure to defendant(s) assertedly exists.

Here, the facts assert minimum diversity is present as between Elvira, a California domicile, and defendants MM, Inc. (Kansas corporation) and Lidia (Nebraska domicile).

However, while sufficient numerosity (over 100 members) assertedly exists, the complaint asserts only \$1,000,000 in damages for the class, which fails to meet CAFA's requirement of over \$5,000,000.

Conclusion:

It appears more probably than not that Judge Patrick should not certify the proposed class action, either under FRCP 23 or CAFA.

KCCL Civ Pro 2024 Final Question #2 Answer Outline

Issue: Whether Judge Patrick should grant Defendant Sam's motion to return emails and for monetary sanctions

Rule: FRCP 26(b),(c) and 37 allow for a motion to be made to "claw back" protected materials inadvertently produced following a demand for return of such documents and a meaningful meet and confer effort to resolve a dispute regarding such production and demand for their return. FRCP 37 allows for recovery of monetary sanctions against a party unsuccessfully...and unreasonably...making or opposing a motion for protective order.

Analysis/application:

FRCP 26(c) allows a party to seek a protective order to, inter alia, "claw back" protected materials inadvertently produced in response to an FRCP 34 demand. A good faith attempt to meet and confer to resolve the inadvertent production issue (by return of the documents and any copies; and that no reference to their contents be presented, directly or indirectly, at trial) be made before the party seeking the

protective order brings such motion.

Here, emails regarding possible retention of an expert for defendant Sam on the potential that Bug Death, Sam's manufactured product, caused plaintiff Elvira's injuries were erroneously included by Sam's attorney's secretary in a document production to Elvira's attorney. Such documents appear to constitute both attorney work product and attorney client privilege materials.

Thus, the emails produced would appear to be properly returned by Elvira's attorney, David, in response to a reasonable request by Sam's attorney, James. Here, however, James has provided only five days to Elvira's attorney to return the documents (and any copies). David, Elvira's attorney, will argue that five days is insufficient, and not a good faith attempt to resolve the issue; and that the lack of response by David was due to the unreasonably short time period of five days to respond.

David will also argue to Judge Patrick that the bringing of the FRCP 26(c) protective order with FRCP 37 monetary sanctions on the sixth day...one day following the unreasonably short period of five days...does not constitute a good faith effort by Sam's attorney to meet and confer to resolve this discovery dispute.

Conclusion:

Judge Patrick should find that while the materials involved constituted protected documents as work product and attorney client privilege, that there was a failure by Sam's attorney, James, to engage in a "good faith" meet and confer (or attempt to meet and confer), and thus deny the motion by James including the request for monetary sanctions as sought against both David and Elvira.

KCCLCiv Pro 2024 Final Exam Question #3 Answer Outline

*Issue:
Whether Judge Patrick should allow witness P. Maxwell from testifying further*

Rule:

FRCP 26(a) requires a party to disclose the identity of all witnesses the party intends to call to testify at trial; and FRCP 16 requires that parties at the final pretrial conference to disclose a final witness list.

Analysis/application:

Here, Lidia on the ninth day of trial called a witness, P. Maxwell, not previously listed in Lidia's Rule 26(a) disclosure nor final pretrial conference witness list. Scheduling Conference orders are intended to control the litigation through trial, subject to any amendments allowed at the final Rule 16 pretrial conference.

Here, Elvira's attorney, David, objected to P. Maxwell testifying as soon as David realized that Maxwell had not been previously disclosed.

Lidia will argue that David's objection to Maxwell was untimely where, as here, Maxwell had already testified by the time of such objection that Lidia's product as used by Elvira did not contain Bug Death.

Lidia will further argue that Maxwell could not have reasonably been disclosed in her Rule 26 or 16 witness lists as his identity was not discovered until the day before the trial began.

Attorney David will argue that no opportunity has been provided for the parties to depose Maxwell before trial and

prepare rebuttal evidence to his testimony as provided and as further proposed to be elicited, and that the prejudice to the remaining parties is significant.

Conclusion: Judge Patrick will most probably preclude any further testimony from witness Maxwell.

Whether Maxwell, if allowed to testify, should be allowed to testify that Bug Death was not in the mushies Elvira ate as Alondra obtained from Lidia

Rule: A party cannot introduce evidence that contradicts a previously given response to a request for admission absent the trial court determining that doing so would not prejudice the requesting party. FRCP 36(b).

Analysis/Application:

Here, Lidia provided an unqualified admission to Elvira's prior request for admission that Bug Death was in the mushies Elvira ate as were obtained by Alondra from Lidia. To allow Lidia to withdraw (or amend) such response by allowing testimony that the particular mushies that Lidia bought from MM, Inc. would effectively eviscerate...dramatically prejudice...Elvira's case against Lidia, MM, Inc. and Samuel.

In addition, the proposed previously undisclosed witness, P. Maxwell, is stated to have been Lidia's foreman. It would not appear that Lidia can persuasively argue that she should not have been aware of his potential use as a witness until the day before the trial began had Lidia used due diligence in preparing Lidia's Rule 26(a) and Rule 16 witness disclosures.

Conclusion: Judge Patrick should preclude P. Maxwell from testifying further regarding Bug Death's absence from the mushies ingested by Elvira, and should strike Maxwell's testimony as given prior to Plaintiff's attorney's objection.

Issue: Should Judge Patrick excuse Juror #6, T. Poe, from sitting as a juror?

Rule: FRCP 47(c) provides that jurors holding actual or implied bias should properly be excluded from sitting on a jury.

Analysis/Application: Here, Juror #6, T. Poe, has disclosed during trial that witness P. Maxwell was Poe's former boyfriend. That relationship would appear, more probably than not, to create an implied, if not rising to an actual, bias for Poe to continue to sit on the jury. Elvira would argue that this issue of bias resulted from Lidia's failure to properly disclose Maxwell as an intended witness, and thus no failure to timely object on Elvira's part has occurred.

Lidia would likely argue, however, that if Judge Patrick grants Elvira's motion to strike Maxwell's testimony and to further preclude further testimony by Maxwell that no need exists for Poe to be excused, particularly if the jury is admonished to disregard Maxwell's testimony. Lidia would also likely argue that Juror #6 (Poe) only heard Maxwell's testimony because of Elvira's attorney belatedly objecting to Maxwell having been called to the stand.

Conclusion: Judge Patrick should appropriately excuse Poe as a juror on the basis of implied bias.

Issue: Should Judge Patrick grant Elvira's request for a mistrial

Rule: A mistrial may be granted in the court's discretion when less than six jurors unanimously vote (or are available to vote) for a verdict in a case where a jury trial has been appropriately requested and is seated. FRCP 48(a); 59(a), (b).

Analysis/Application: If Judge Patrick excuses Juror #6 (Poe) for cause during the trial, there will only be five seated jurors. FRCP 48 requires a minimum of six jurors in a jury trial.

Conclusion: If Juror #6 is excused, Judge Patrick should grant Plaintiff Elvira's request for a mistrial.

1)

How should Judge Patrick rule on David's request for class certification? GOOD, THANK YOU.

CLASS ACTION-

(a) FRCP 23(a).

FRCP 23 a provides that actions be certified as class actions where there is: 1) Sufficient Numerosity, 2) Common questions of law and fact amongst the class, 3) the class representative's or named parties' claims or damages are typical to the rest of the class, 4) adequate representation of the class' interests by the class representative.

There must be valid personal jurisdiction and subject matter jurisdiction, which is implied in the instant matter.

Additionally the party must show the class action would be the superior way to litigate the claims--i.e. if the claims were tried separately in a fashion that yielded inconsistent results or impaired the interests of the absent members of the class.

Finally, ? there must be sufficient the federal court must have valid personal matter jurisdiction and subject matter jurisdiction. "VALUO" NOT NEEDED TO BE STATED.

NUMEROSITY

One prerequisite to be met before a class action can be certified is that the potential plaintiffs or class members must be so numerous that it would make utilizing the joinder to join and name all plaintiffs impracticable.

Here, the complaint filed by David asserted that there would be over 100 members. OKAY

Thus, it can be reasonably surmised that plaintiffs have satisfied the threshold required because it would be burdensome and impracticable to attempt to utilize the joinder for over 100 different plaintiffs.

COMMONALITY

The second prerequisite to be met before a class action can be certified requires that all members of class share in common a question/issue of law or fact.

Specifically, the following must be shown: The class members were subject to the same common violation of legal right or wrongdoing perpetrated by the defendant(s) or the class members suffered the same type of injuries or damages.

In the instant matter, we only know of the damages that Elvira suffered which are bodily damage and general damages(a week at the hospital, indefinite stay in Idaho, and 80k in medical expenses).

David will argue that all the members of the class have suffered damages stemming from the "central" and common issue of Def. LBL and Def. MM's negligence and defective and dangerous product(s). He will contend that the negligence also stems from the defendants' RICO violations, and that all the issues are central and common amongst the class members.

However, the defense will argue that damages from negligence and product liability claim are substantitally different than damages from RICO violations. This argument would likely prevail and thus there would not be sufficient commonality. The damages asserted in the complaint. of bodily injuries, property damge, wrongful death(loss of scoeity and comfort) present a wide spectrum of damages and it can be easily reasoned that not many of class member may have only experienced only 1 from the damages listed in the complaint.

CONCLUSION: (SUBISSIVE OF COMMONALITY NEEDS A CONCLUSION)

TYPICALITY

The third prerequisite to be met before a class action can be certified requires that the named representative to have suffered damages or possess a claim that is typical of the rest of the members of the class.

Here, the facts show that David is seeking to be the attorney for the class and so it is reasonable to surmise that this would make his client, Elvira the representative of the class.

Elvira's claims resulted from her consumption of the magic mushies and the illness yielded from that consumption. David would echo his interconnectedness of issues argument, supra.

However, the defense would argue that Elvira's claims and damages are tied strongly to the negligence, and product liability claims that are asserted in the complaint. Moreover, there may be others that have a claim against the defendants that is based solely on the defendants' alleged

RICO violations or solely based on negligence or product liability. Or there may be class member who only suffered 1 type of the listed damages in the complaint.

Thus, the court would likely hold that there is not sufficient typicality in the instant case.

ADEQUATE REPRESENTATION

The fourth prerequisite to be met before a class action can be certified requires that the named plaintiff within the class ensure adequate representation and protection of the interests of the absent members.

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FULLER
ANALYSIS
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Here, David would argue that Elvira's claims are common to the rest of the of class and so the questions and issues of the class predominate over individual interests.

However, the defense would argue that because not all of the class members possess the same claim or claims as Elvira, which would leave the door open for Elvira to favor claims that are in her interest to favor.

Thus, the court will likely find that there is not adequate representation of the absent class members.

Finally, David and Elvira must show that the class action would be the superior way to litigate the claims.

David would argue that if the claims were tried separately then it very well may yield inconsistent results or impair the interests of the absent members of the class especially as it pertains to the product liability claim.

However, the defense would argue that the diversity of claims asserted in the complaint would be better litigated separately.

The court will agree with the defense, mostly because David's request for class certification has already failed to meet several prerequisites of class action.

CLASS ACTION FAIRNESS ACT ("CAFA")

The class action fairness act was enacted to relax federal jurisdictional requirements for some class actions. CAFA provides that a class action can be certified if the following are true: 1) the aggregate amount in controversy exceeds \$5,000,000.00, 2) there are over 100 class members, and 3) any plaintiff, not just the class member, has diversity of citizenship from any defendant.

In the instant matter, if David failed to get his request for class certification passed by way of FRCP 23 he would then attempt to get it certified by way of "CAFA."

The complaint authored by David purports that the damages are in excess of 1 million dollars, thus not reaching the threshold of 5 million dollars required by CAFA. The complaint does purport that there is over 100 class members. The diversity issue is not really in play because Elvira already had diversity of citizenship with the defendants.

Thus, David would not succeed in class certification by way of CAFA.

CONCLUSION: Judge Patrick should rule to deny David's request for class action by way of FRCP 23.

In not granting the class certification as requested by David, Judge Patrick can also decide to order the creation of sub classes and additional representatives to represent the class members that suffered from each particular type of harm, *OR ALLOWING AN AMENDMENT TO THE COMPLAINT TO DROP P.D. AND/D CLAIMS*

*RATHER THAN AN ADD ON AT THE END,
THIS SHOULD BE PART OF COMMUNALITY AND/OR
ADEQUACY OF REPRESENTATION ISSUES*

2)

How should Judge Patrick rule on James Motion?**Parties response to discovery request:**

Discovery Rule 26 requires parties to disclose certain information to other parties without waiting for a discovery request. The named parties must reveal disclosed information to the opposing party in writing, signed and served at the discovery planning conference or within 14 days after. It requires parties to disclose all information "then reasonably available" that is not protected as work product. Parties must identify people with discoverable information that they may use to support their case. Parties must give copies or descriptions of things that they may use to support their case (documents, tangible items, emails). A Request for Admissions (RFA) is an act to admit or deny any discoverable matter, If you do not deny ^{OR OBJECT} in 30 days, you have admitted. Under Rule 26(b), when a party withhold information otherwise discoverable by claiming the information is privileged or subject to protection, ~~the~~ party must (1) expressly make the claim, and (2) describe the nature of the documents, or communications not produced or disclosed, and do so in a manner that is without revealing information itself that is privileged or protected.

Here, MM, Lidia and Sam all responded to the request for discovery by admitting or denying to the Request for Admissions and advising counsel of the documents they have or do not have in their possession. David would have to expressly make the claim that he believes MM and Lidia are not producing documents otherwise discoverable and that Sam is refusing to answer to Request for Admissions (RFA). If Lidia, MM and Sam are withholding information otherwise discoverable they must inform the court on why they believe they should not produce the documents or answer to the RFA.

Judge Patrick would find that the Sam, Lidia and MM followed rule 26 and responded to the discovery request for RFA and request for document production. They also provided a reason for the discovery not submitted.

James Request for Discovery to be Returned

The attorney work product doctrine protects materials prepared by an attorney or a client in anticipation of or during litigation from discovery by the opposing counsel. Such materials

will not be protected from disclosure to opposing counsel if: (1) The materials are otherwise unavailable, (2) There is a substantial need for the material; and (3) the materials cannot be obtained without undue hardship. However, a writing that reflects an attorney's impressions, conclusions, opinions, legal research, or theories is never discoverable. If a party mistakenly discloses privileged information or work product to the opposing parties, the party disclosing the information may still invoke a claim of privilege or work product protection.

Here, Sam produced numerous emails and invoices to Elviara's attorney David in the Document production request. James claims the emails contained attorney work product because it discussed the possibility for retention of an experts for Sam as well as other emails and invoices to MM. James may claim that these emails and documents contained writings that reflect the attorneys impressions, and opinions regarding the case and the plan for the case. David may argue that under FRCP 26(a)(1) it requires parties to state the identity of all witnesses that party intends to call as witnesses in support of the party's case, including expert witnesses. Thus, the email disclosing the plan for an expert witness would NOT CORRECT not be protected because James would then have to disclose that information. Therefore, the documents/emails produced would not fall under the work product doctrine. David may also argue that FRCP 34 allows a party to demand production of relevant documents not protected from discovery from another party to the pending suit, including documents obtained or prepared in anticipation of litigation. This would include the invoices to MM, that would reflect and prove the sale of Bug Death to MM.

The court would most likely find that the information disclosed in the document production to David is not protected under the attorney work product doctrine. In the event that the information is found to be protected. POSSIBLE RETENTION OF EXPERT WOULD BE WORK PRODUCT - ATTN'S IMPRESSIONS/THOUGHTS James would make a claim under FRCP 37 which allows a party to file sanctions against a nonconforming party by filing a motion. They must first attempt to meet and confer before filing a rule 37 (a) motion to compel, the attempt must be reasonable, otherwise it will be denied and the party must properly file the motion in the appropriate court. If the deponent fails to obey a court ordering discovery, ~~the~~ the failure to comply may be treated as contempt of court. The court may order payment of reasonable expenses, including attorney's fees, the court may inform the jury of the party's failure to comply and may impose other appropriate sanctions.

Here, James gave David 5 days to return all the emails and copies to him. Five days may seem unreasonable to the court. Most courts would consider 10 court days as being more reasonable to response to a request. However, this would be the judge's discretion. Additionally, James did not reasonably attempt to meet and confer with opposing counsel to discuss the retention of the documents requested.

Judge Patrick would most likely deny Jame's motion demanding that David return all the emails/documents and may allow David to reference the documents at trial. Monetary sanctions would be denied because James did not attempt to meet and confer with David or give him reasonable time to respond to his request demanding the return of the emails/documents.

IN GOOD FAITH

90

3)

1. How should Judge Patrick rule on David's motion to preclude P. Maxwell from testifying further? GOOD

FRCP 26 DISCLOSURES

Under FRCP 26, parties are required to make initial disclosures (14 days prior to the rule 16f conference), expert disclosure, and pre-trial disclosure.

Initial disclosures call for the party to identify any persons that may lead to discoverable information that is favorable to the disclosing party's case. Also during initial disclosures, the disclosing party must identify or describe any documents, electronically stored information, or tangible items that would lead to discoverable information that is favorable to the disclosing party's case. Further the plaintiff must provide a computation of damages and the defendant must provide a disclosure regarding insurance.

Expert disclosure, occurs later in the course of litigation, and requires that both parties identify any expert witnesses and expert information or contentions that they intend to use at trial NOT RELEVANT OR NEEDED

Finally, Pre-trial disclosure, is where the parties are very close to trial and must disclose a witness list (with all witnesses the party intends to call at trial), exhibit list, evidence, and depositions to be used at trial, among other items. This disclosure is to prevent any party from being blindsided at trial.

In the instant case, Lidia, called P. Maxwell as her first witness. The facts show that P. Maxwell was not included on the witness list provided by Lidia at the pretrial conference as required by FRCP 26. David will argue that he is blindsided by this surprise witness and that his client Elvira is prejudiced by the calling of P. Maxwell. David would argue that the foreman of LBL, Lidia's own company, should have been disclosed with the initial disclosure as a party that may help Lidia's case or contentions. Further, David would argue that in the 21st century, where there is e-filing and e-mails - Lidia should have filed an amended witness list and notified him via email, so the matter could properly be taken up with the court prior to the calling of P. Maxwell. OKAY

Lidia would argue that she just found out about the witness and his use a day before trial and thus could not have notified David of the new witness.

Judge Patrick, would be understandably upset with Lidia and stop the witness from further testifying and would instruct the counsels to take the deposition of P. Maxwell before he could testify at trial. LIKELY
AND ALLOW PARTIES TO CALL REBUTAL WITNESSES.

2. How should Judge Patrick rule on Davids motion to preclude P. Maxwell from testifying further that Bug Death was not in the mushies Elvira ate as Alondra obtained from Lidia and to strike such testimony?

REQUEST FOR ADMISSIONS

A request for admissions is a form of written discovery that implores the responding party to admit or deny to questions of fact in the instant case. Once received the responding party has 30 days to respond. A request for admissions can only be served on a party to a case and not to non parties. A non-response is considered to be an admission.

Good Here, David had propounded RFA's to Lidia regarding whether mushies ingested by plaintiff elvira contained "bug death." In response, Lidia responded with an admission. Under FRCP 36 this admission cannot be withdrawn or denied at trial. The facts show that P. Maxwell was going to withdraw the admission at trial through his testimony. T

Thus, Judge Patrick would likely rule that P. Maxwell would not be able to testify that bug death was not in the mushies at trial at the present hearing.

However, as a an exception due, to Lidia's late discovery of the witness that came after her RFA response--Judge Patrick would allow the deposition to be taken that evening of P. Maxwell before any further trial testimony could be had.

3. How should Judge Patrick rule on David's motion to excuse Juror # 6, T. Poe, from sitting as a juror?

Under the FRCP, the court has unlimited challenges for cause. Challenges for cause will excuse a juror if they are a felon, or if they possess any inherent bias such as being the brother of the plaintiff. They are different from peremptory challenges, each counsel has 3, which allows the attorneys for each party to strike any potential juror from the jury pool, although it must not be for race and gender neutral reasons.

Here, Juror # 6, proclaims to be the ~~boyfriend~~ ex-girlfriend of the witness P. Maxwell.

IMPURED (FRCP 47)

David would argue that romantic relationships, especially those that have ended, result in strong feelings and inherent bias. Judge Patrick would have to gauge the juror and ask her if she felt that she would feel she would be able to in good faith continue on as a juror.

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Another factor that would come into play is if P. Maxwell is allowed to continue testifying, if so then Judge Patrick would likely have to dismiss Juror #6. Because juror #6 would likely not be able to contain any bias she may have regarding P. Maxwell.

CONCLUSION: he (WHAT IS YOUR CONCLUSION?)

4. How should Judge Patrick rule on David's request for a mistrial?

Judge Patrick should rule in favor of David's request for a mistrial, primarily because without Juror #6 the case will not have the required minimum number of jurors needed for a jury trial under the FRCP, which is 6. (Additionally in Judge Patrick's reasoning for granting a mistrial would be Lidia's misconduct by never disclosing witness P. Maxwell throughout the course of discovery.)

→ THIS SHOULD
BE INCLUDED
IN YOUR
ANALYSIS OF
YOUR 'MISTRIAL'
ISSUE

END OF EXAM