

## **REMINDER: LAW SCHOOL HONOR CODE**

The School of Law's Honor Code applies to this examination and all work done in this course. The Honor Code prohibits plagiarism (regardless of intent to deceive, misrepresent, or gain unfair advantage) and violation of oral or written instructions concerning this examination in order to gain an unfair advantage over other students or under circumstances which a reasonable law student would know were likely to result in unfair advantage.

### UNIVERSITY OF MISSOURI-COLUMBIA SCHOOL OF LAW

#### CIVIL PROCEDURE II -- SECTION 2 DEAN DESSEM

May 10, 2005

#### INSTRUCTIONS

1. This is the first part of your two-hour final examination. Please be sure that you have all three pages of this portion of the examination.
2. This portion of the examination should take approximately one hour. During this examination, you are permitted to have with you any written or printed materials. However, you are not to look at materials brought by others or speak with anyone concerning the examination during the examination period.
3. Please take sufficient time to think through and organize your answers before beginning to write your answers.
4. Explain your answers and, if any assumptions of law or fact are necessary for any answer, set forth such assumptions.
5. Don't belabor the obvious in your answers, but focus on the more difficult aspects of the question.
6. This entire examination consists of the following essay question and a series of multiple choice questions. The essay question will count for approximately one-half of your grade, as will the set of multiple choice questions. The subparts of the essay questions will not necessarily be worth an equal number of points. You are to turn in your examination booklet and answer to this portion of the examination in order to receive the multiple choice questions.
7. Your examination number should be placed on your bluebook, as well as on your examination booklet (which must be handed in at the end of the exam along with your bluebook). Please write legibly and only on one side of each page.

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EXAMINATION NUMBER

Paula Pretzel, a resident of California, is a very promising University of Missouri gymnast who apparently injures her back during practice on January 10, 2004, and quits the gymnastics team alleging that “I have no choice because I’ve been mistreated by our physical therapist.” She files a tort action against Danielle Defendant, the physical therapist, in California state court. Paula soon loses interest in this lawsuit, because she concludes the California court will not be particularly sympathetic to her claim. Because Paula does not prosecute her claim, and does not appear at a pretrial conference in California, the California court dismisses this action “with prejudice.”

Paula then brings a diversity action in federal district court in Missouri, asserting a \$1,000,000 tort claim against Danielle for injuries allegedly arising from mistreatment of Paula’s back.

Pursuant to court order, the attorneys for Paula and Danielle hold their Rule 26(f) conference on June 1, 2004. At this conference, Paula’s attorney provides Danielle’s attorney with a list of individuals with discoverable information which Paula may use to support her claims, several documents upon which Paula may rely, and a calculation of the basis of Paula’s \$1,000,000 damage claim. Danielle’s attorney does not produce anything for Paula, and Paula’s attorney tells her, “That’s O.K. I’m sure you’ll get me the relevant information when you have time.”

On June 2, Paula’s attorney files a motion seeking sanctions against Danielle because of her “refusal to comply with federal disclosure requirements.” By this motion, Paula seeks an order compelling Danielle to provide the pretrial disclosures required by the Federal Rules of Civil Procedure, an order holding Danielle in contempt of court, and \$10,000 in damages.

Before the court can rule on this motion, Danielle provides Paula with the requested disclosures and the judge says that he will “withhold a ruling on this motion for now.”

Danielle then files a July 1 request seeking from Paula (1) a psychiatric examination of Paula (to support Danielle’s theory that Paula’s physical difficulties are “all in Paula’s head”); and (2) a copy of a statement that Paula’s attorney took from Charlene Coach on January 12, 2004, concerning what happened at the January 10, 2004, gymnastics practice. Receiving no response to this request, on August 1, 2004, Danielle files a motion to compel this psychiatric exam and Charlene’s statement.

Also on August 1, 2004, Danielle files a motion for summary judgment. She seeks summary judgment on two separate grounds: (1) Danielle asserts that “the California judgment against Paula operates as claim preclusion in the current action and requires the court to enter judgment for Danielle on Paula’s current claims;” and (2) Danielle argues that she is entitled to summary judgment based upon an affidavit from Gracie Grace, a former member of the MU gymnastics team, in which she says that “Paula’s back was never really hurt, and Paula told me herself that her back was fine and that she was bringing her lawsuits just to ‘get back’ at Danielle, the team’s physical therapist.”

On August 15, Paula responds to the motion for summary judgment with a one-page opposition in which Paula’s lawyer states, “Paula never set foot in a California courtroom and the California court never heard one bit of testimony, so she is entitled to raise her claims in Missouri.

As for the second basis for summary judgment raised by Danielle, Paula is not even going to dignify Gracie Grace's charges with a reply. Instead, Paula relies upon the allegations of her complaint."

Based upon the above facts, please answer the following questions:

(1) Should the court provide Paula with any relief in connection with her June 2 sanctions motion?

(2) Should the court grant Danielle's August 1 motion to compel?

(3) Should the court grant Danielle's August 1 motion for summary judgment?

Please explain each of your answers and discuss the applicable law in your answers.