

FINAL EXAMINATION
CIVIL PROCEDURE I – LAW 6212
Section 13A – Siegel – Fall 2023
INSTRUCTIONS

1. This is an open book examination. You may use any written materials that you have brought with you to the exam. “Written” materials include materials that are handwritten, typewritten, printed, or published. It also includes the electronic equivalents thereof, provided the materials are stored on your computer prior to the exam. You may retype text from such materials into your exam answer. However, during the exam, it is forbidden to access the Internet, to consult any other person directly or indirectly, or to make use of an artificial intelligence program.
2. You have THREE HOURS to complete the exam. The exam consists of this instructions page and eleven pages of questions. There are FOUR ESSAY QUESTIONS and TEN MULTIPLE CHOICE QUESTIONS. All students must answer all questions. Recommended time allocations are:

Essay Question 1:	30 minutes
Essay Question 2:	40 minutes
Essay Question 3:	40 minutes
Essay Question 4:	30 minutes
Multiple Choice Questions:	40 minutes total
3. Do not put your name anywhere on your answers. If you are writing your answers by hand, remember to *write legibly*.
4. Answers to the essay questions prepared using the Exam4 software must contain no more than a total of 5000 words. (That’s 5000 words for all four essay questions, *not* 5000 words per question.) The software will report the number of words in your answers. Answers that contain more than 5000 total words will be penalized.
5. If, with regard to any essay question, you think additional facts are needed to answer the question, state clearly what facts you think are missing. Then make a reasonable assumption about the missing facts and answer the question based on your assumption. Do not change the given facts.
6. Using good judgment, address all the issues presented and assigned by the essay questions, even if your answers to some issues would, in real life, eliminate the need to address other issues.
7. Unless otherwise specified, assume all events described in the questions occurred in the United States and answer all questions on the basis of current law.
8. Good luck.

ESSAY QUESTION ONE

Title VII of the Civil Rights Act of 1964 (“Title VII”), a federal statute, prohibits race discrimination in employment. Title VII applies throughout the United States. In 2024, the U.S. Supreme Court considers a Title VII case, originally brought in federal district court, in which the complaint alleged that “the plaintiff worked for the defendant and the defendant violated Title VII by firing the plaintiff because of the plaintiff’s race,” but contained no allegations showing how the plaintiff knew the defendant’s motive for firing the plaintiff. The Supreme Court holds that such a complaint does not satisfy Federal Rule of Civil Procedure 8(a)(2)’s requirement that a complaint contain “a short and plain statement of the claim showing that the pleader is entitled to relief.” The Supreme Court holds that Rule 8(a)(2) requires a complaint in a Title VII case to contain allegations that make it “plausible” that the defendant’s motive was a motive forbidden by Title VII.

The Maryland Human Rights Act (“MHRA”) prohibits race discrimination in employment. It applies to any employer in Maryland. In 2025, Maryland’s highest state court considers a case, originally brought in a Maryland state trial court, in which the complaint alleged that “the plaintiff worked for the defendant within Maryland and the defendant violated the MHRA by firing the plaintiff because of the plaintiff’s race,” but contained no allegations showing how the plaintiff knew the defendant’s motive for firing the plaintiff. Maryland’s highest state court holds that this complaint sufficiently states a claim under the MHRA.

In 2026, Paulina, a citizen of Virginia, brings suit against the Diamond Corporation, a corporate citizen of Maryland, in federal district court in Maryland. Paulina’s complaint alleges, “the plaintiff worked for the defendant within Maryland and the defendant violated both Title VII and the MHRA by firing the plaintiff because of the plaintiff’s race,” but it contains no allegations showing how the plaintiff knows the defendant’s motive for firing the plaintiff. The complaint seeks \$150,000 in damages.

The defendant moves to dismiss the complaint for failure to state a claim. The plaintiff opposes the motion. Both sides make all appropriate arguments.

You are the law clerk to the district judge considering the case. Write a memorandum discussing the issues presented by the motion. Conclude your memorandum with a recommendation as to whether the defendant’s motion to dismiss should be granted or denied.

ESSAY QUESTION TWO

Cryptocurrencies (“crypto”) are privately created digital currencies such as Bitcoin and Ethereum. In 2024, Congress passes the Federal Crypto Regulation Act (“FCRA”), a federal statute. The FCRA provides that those who trade crypto on behalf of others must act in their clients’ best interests. It provides that if this requirement is violated, the client may sue for the resulting damages. However, the FCRA imposes liability only on the entity that accepted money from the client. It does not impose liability on individual employees of that entity, even if they perform the actual trades. To fill this gap, the state of Illinois passes the Illinois Crypto Traders Act (“ICTA”). The ICTA provides that any individual who makes crypto trading decisions for another must act in the client’s best interests, and that individuals who violate this requirement are liable for the resulting damages.

Brian, a citizen of Illinois, wants to make money in crypto but does not know how. He opens an account at C-Trade, which specializes in crypto trading. C-Trade is a corporation incorporated in Delaware with its principal place of business in Illinois. Brian deposits \$100,000 in his C-Trade account and instructs C-Trade to make money for him by trading crypto. C-Trade assigns its employee Darla to trade crypto on Brian’s behalf. Darla is a citizen of Minnesota.

A year later, the balance in Brian’s account is down to \$50,000. Brian complains that Darla’s trades were not in Brian’s best interests, but were made to generate fees for C-Trade and Darla, and that is why he lost money. C-Trade and Darla reply that Darla’s trades were in Brian’s best interests and that he lost money because of the risks inherent in crypto trading.

Brian sues C-Trade and Darla in federal district court in Illinois. His complaint alleges the above facts and claims that C-Trade is liable to him for \$50,000 under the FCRA and Darla is liable to him for \$50,000 under the ICTA. (Brian doesn’t expect to be able to ultimately collect more than a total of \$50,000, but he wants to be able to collect it from either defendant.)

Two motions are filed. First, C-Trade moves to add a claim against Darla. C-Trade asserts that Darla, in her employment agreement with C-Trade, promised not to cause C-Trade to be in violation of any laws. C-Trade asserts that if Brian is correct, Darla has breached this promise and is therefore liable to C-Trade for whatever it owes Brian. Darla opposes C-Trade’s motion to add this claim on the grounds that the joinder rules do not permit it to be added and that the court lacks subject matter jurisdiction over it.

Second, Darla moves to dismiss Brian’s claim against her on the ground that the court lacks subject matter jurisdiction over it and on the ground that the joinder rules do not permit the claim to be joined to Brian’s claim against C-Trade.

How should the court rule on C-Trade’s motion to add a claim against Darla? How should the court rule on Darla’s motion to dismiss Brian’s claim against her? Explain your answers. (You may refer to the parties as B, C, and D.)

ESSAY QUESTION THREE

Miguel is a citizen of Mexico who has been admitted to permanent residence in the United States. Miguel lives permanently in California. He gets into a car accident with Thomas in California and suffers a significant injury. Thomas was born in Arizona and lived there all his life until two months before the accident, when he moved to California because his employer sent him there for a one-year assignment. Thomas anticipates returning to Arizona when the year is up.

Miguel brings suit against Thomas in federal district court in California. He seeks \$100,000 in damages for the car accident. Miguel's counsel hires a process server to serve process on Thomas. The process server brings the summons and complaint to Thomas's California home. Thomas is out, but Francine, a 32-year-old cleaner who cleans Thomas's house once a week, is there and answers the door. The process server leaves the papers with Francine, who agrees to give them to Thomas and who does give the papers to Thomas when he arrives home. A statute of the state of California provides: "In all civil actions, process may be served on an individual defendant either by personal service or by leaving the process at the defendant's home with any person of suitable age and discretion who is present therein at the time of service and who takes responsibility for delivering the process to the defendant." Thomas moves to dismiss the case for insufficient service of process.

A. How should the court rule on the motion to dismiss? Explain.

Whatever you thought of that motion, it is denied. Thomas then answers the complaint. The answer denies that Thomas was ever in a car accident with Miguel. It asserts that Thomas has never met or interacted with Miguel in any way. Miguel's counsel has learned that Thomas works for a federal government defense contractor that requires Thomas to file a report each time he has any interaction with any person who is not a U.S. citizen. Miguel's counsel serves a discovery request for production of any report that Thomas has filed with his employer regarding his interactions with Miguel. Thomas's counsel refuses to respond to this request on the grounds that it is not within the scope of discovery and that such a report, if it existed, would be "work product." Miguel's counsel moves to compel production of the report.

B. How should the court rule on the motion to compel production? Explain.

Whatever you thought of that motion, it is denied. Thomas's counsel then moves to dismiss for lack of subject matter jurisdiction. Miguel's counsel opposes the motion and argues, among other things, that Thomas waived this issue by answering the complaint.

C. How should the court rule on the motion to dismiss? Explain.

Whatever you thought of the motion, it is denied. Immediately thereafter, Thomas's counsel takes an appeal of the denial of the motion to dismiss for lack of subject matter jurisdiction.

D. What is the likely outcome of the appeal? Explain.

ESSAY QUESTION FOUR

Angela is a star athlete at a high school in New York state. She enters a competition sponsored by Youth Athletics, Inc. (“YAI”), a New York corporation. The competition has a \$50,000 prize and is limited to entrants who are under age 18 on July 1, 2024. Angela wins the competition. However, YAI refuses to give her the prize money on the ground that it believes, based on information it has received from other competitors, that Angela was already 18 on July 1, 2024. Angela maintains that she was 17 on that date. Angela was born outside the U.S. in a country where birth records are not reliable, so it is not simple to prove her age. Angela sues YAI in state court in New York for the prize money.

Shortly thereafter, Carl, a publicist, sues Angela in a separate action in state court in New York. Carl’s complaint alleges that on July 1, 2024, Angela agreed to pay him \$10,000 for his services as a publicist and that she has failed to pay as promised. In her answer to Carl’s complaint, Angela denies that she ever reached any agreement with Carl. The answer also states as a defense that even if Angela and Carl had reached the alleged agreement on July 1, 2024, Angela would not be bound by the agreement because she was only 17 on that date. Under New York law, a person under age 18 is a minor, and contracts entered into by a minor are not binding on the minor.

The two cases are litigated separately. In both cases, the parties litigate the issues vigorously. The case of Carl v. Angela proceeds more rapidly, and it goes to jury trial while the case of Angela v. YAI is still in discovery.

The judge in the case of Carl v. Angela requires the jury to return a general verdict with answers to questions. The general verdict is for the defendant, Angela. In the answers to the questions, the jury states that (1) Angela was 18 on July 1, 2024, and (2) Angela never agreed to pay Carl for any services. Judgment is entered on the jury’s verdict. Carl takes an appeal.

While Carl’s appeal is pending, YAI moves for summary judgment in the case of Angela v. YAI on the basis of the preclusive effect of the judgment in the case of Carl v. Angela. Angela opposes the motion. Both sides make all appropriate arguments.

The parties agree that the case is governed by New York law. On all issues relating to preclusion, New York follows the modern, majority rules.

You are a law clerk to the judge who is handling the case of Angela v. YAI. The judge asks you to write a memorandum that discusses the issues raised by YAI’s motion for summary judgment, explains the correct ruling on each issue, and concludes with a recommendation as to whether YAI’s motion for summary judgment should ultimately be granted or denied.

Write the memorandum.

MULTIPLE CHOICE QUESTIONS

Instructions

1. For each question, choose the best answer from the answers provided.
 2. Answer the questions using the exam software, as instructed by the school.
 3. Every question has five answer choices labeled A through E. Be sure to read all the answer choices, even if they continue onto the next exam page.
 4. There is no penalty for wrong answers, so answer every question.
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1. Finian brings suit against Gerald in federal district court. After alleging jurisdiction based on diversity, Finian's complaint alleges, "On June 1, 2024, the plaintiff lent the defendant \$200,000. The defendant promised that on June 1, 2025, the defendant would repay this money plus 6% interest. The agreed repayment date has passed but the defendant has not repaid any of the money. Wherefore, the plaintiff demands judgment against the defendant for \$200,000 plus 6% interest." Gerald moves to dismiss the complaint under Federal Rule 12(b)(6). In the motion, Gerald denies having ever borrowed any money from Finian. What is the likely outcome of the motion?

- A. Denied, because the defendant failed to submit evidence (such as a sworn affidavit) along with the motion.
- B. Denied, because on a motion to dismiss under Rule 12(b)(6), the court must assume the factual allegations of the plaintiff's complaint to be true.
- C. Granted, because on a motion to dismiss under Rule 12(b)(6), the court need not assume conclusory allegations of the complaint to be true.
- D. Granted, because to survive a motion to dismiss under Rule 12(b)(6), a complaint must contain more than a formulaic recitation of the elements of a cause of action.
- E. Granted, because the plaintiff's complaint fails to specify the legal theory (e.g., breach of contract) on which it alleges the defendant is liable to the plaintiff.

2. Phillipe's, a restaurant, buys 100 pounds of bluefin tuna fish, a rare and very expensive species of tuna, from Dixon's, a wholesale fish supplier, for \$200,000. After the fish is delivered, Phillipe's complains that the fish is ordinary albacore tuna, worth only \$2,000. Dixon's maintains that the fish is bluefin tuna.

Phillipe's sues Dixon's in federal district court. Jurisdiction is based on diversity. Count One of Phillipe's complaint asserts that Dixon's committed fraud. Count Two of the complaint asserts that Dixon's breached its contract of sale with Phillipe's. Phillipe's claims \$198,000 in damages on each count.

The case is tried by jury. There is conflicting evidence as to what kind of tuna Dixon's delivered and as to whether Dixon's knew what kind of tuna it was. At the instructions conference, the parties agree that the jury can find for Phillipe's on either count only if it finds that the tuna delivered was not bluefin tuna. Dixon's counsel asks the court to instruct the jury that it can find for

Phillipe's on the fraud count only if it finds that Dixon's *actually knew* that the fish was not bluefin tuna. Phillipe's counsel asks the court to instruct the jury that it can find for Phillipe's on the fraud count if it finds that Dixon's *knew or should have known* that the fish was not bluefin tuna. The judge indicates that she will give the instruction requested by Phillipe's. Dixon's counsel objects on the ground that the instruction misstates the applicable law of fraud.

The judge gives the instruction requested by Phillipe's. The jury returns a general verdict with answers to questions. The general verdict is for Phillipe's in the amount of \$198,000. In response to the questions, the jury states that (1) the fish delivered was albacore tuna, (2) Dixon's did not know, but should have known, that the fish was not bluefin tuna, (3) Dixon's defrauded Phillipe's, thereby damaging it in the amount of \$198,000, and (4) Dixon's breached its contract with Phillipe's, thereby damaging it in the amount of \$198,000. Judgment is entered on the verdict.

Dixon's appeals. On appeal, it asserts that the district court's instruction on the fraud count was incorrect. The judges of the court of appeals believe that the question of whether the instruction was correct is a close, difficult question on which reasonable people could differ, but ultimately they believe the instruction was incorrect and the court should have given the instruction requested by Dixon's. Dixon's raises no other arguments. What should the court of appeals do?

- A. Affirm the judgment, because the issue involved is one as to which review is deferential.
- B. Reverse the judgment, because the issue involved is one as to which review is de novo.
- C. Affirm the judgment, because the district court's error was harmless.
- D. Affirm the judgment, because Dixon's did not properly preserve the error for appellate review.
- E. Dismiss the appeal, because the order appealed from is not appealable.

3. California is divided into four federal judicial districts: Northern, Eastern, Central, and Southern. Abner, a citizen of Oregon, and Wanda, a citizen of California, get into a car accident while both of them are in New York. Believing that Wanda lives in the Eastern District of California, Abner sues Wanda for \$200,000 damages in federal court in that district. Jurisdiction is based on diversity. Wanda asserts that she lives in the Northern District of California and moves to dismiss for improper venue. The trial court determines that Wanda does live in the Northern District of California and grants the motion to dismiss.

Abner then sues Wanda again for \$200,000 for the same car accident, but this time he sues in federal court in the Northern District of California. Wanda moves for summary judgment on the basis of the preclusive effect of the prior suit. What should happen?

- A. The motion should be granted based on claim preclusion.
- B. The motion should be granted based on issue preclusion.
- C. The motion should be denied because claim preclusion requires mutuality of parties.
- D. The motion should be denied because the judgment in the first case is not final.
- E. The motion should be denied because the judgment in the first case is not on the merits.

4. Ford Motor Co. (“Ford”), a Delaware corporation with its principal place of business in Michigan, enters into a contract with Infineon Technologies (“Infineon”), a German corporation, in which Infineon agrees to supply Ford with computer chips necessary for making cars over a ten-year period. Three years later, Infineon asserts that Ford has not been paying for the chips promptly as required by the contract. Infineon invokes a clause of the contract that allows it to terminate the contract and refuse to supply Ford with chips in the future. Ford claims that it has been paying promptly.

Ford sues Infineon in federal district court. Jurisdiction is based on diversity. Ford claims that Infineon has breached the contract. Ford’s complaint seeks damages for Infineon’s failure to supply it with chips as promised. It also seeks an injunction ordering Infineon to supply it with chips at the contract price in the future. Infineon answers the complaint, and on the same day, Infineon serves and files a demand for jury trial. Ford does not demand a jury trial.

In the pre-trial phase of the case, both sides move for summary judgment. The summary judgment record contains much conflicting evidence as to whether Ford violated the payment terms of the contract and whether, in light of high worldwide demand for chips and tight worldwide supply, it is possible for Ford to buy sufficient chips from other suppliers to meet its needs. The court denies summary judgment to both sides and determines that the case must be tried.

Which of the following is true?

- A. Infineon is not entitled to a jury trial because it is the defendant.
- B. Infineon is not entitled to a jury trial because Ford is seeking equitable relief.
- C. Infineon is entitled to a jury trial. The court must submit to the jury the issues of whether Infineon breached the contract; if so, how much the damages are; and whether Ford is entitled to an injunction ordering Infineon to supply it with chips at the contract price in the future.
- D. Infineon is entitled to a jury trial. The court must submit to the jury the issues of whether Infineon breached the contract, and if so, how much the damages are. The court will decide whether Ford is entitled to an injunction ordering Infineon to supply it with chips at the contract price in the future. If the jury determines that Infineon did not breach the contract, the court, even if it does not set the jury’s verdict aside, may still decide to grant an injunction ordering Infineon to supply Ford with chips at the contract price in the future.
- E. Infineon is entitled to a jury trial. The court must submit to the jury the issues of whether Infineon breached the contract, and if so, how much the damages are. The court will decide whether Ford is entitled to an injunction ordering Infineon to supply it with chips at the contract price in the future. If the jury determines that Infineon breached the contract and awards damages to Ford, the court, even if it does not set the jury’s verdict aside, may still decide *not* to grant an injunction ordering Infineon to supply Ford with chips at the contract price in the future.

5. The Careless Chemical Corporation (“CCC”), a corporation incorporated in Delaware with its principal place of business in Arizona, is working on a project in Idaho. One day, it accidentally spills a large quantity of chemicals, some of which flow onto a parcel of land owned by Wallace, a citizen of Idaho, and some of which flow onto a separate parcel of land owned by Norma, also a citizen of Idaho. Wallace believes that the damage to his land is \$50,000. Norma believes

that the damage to her land is \$40,000.

Wallace and Norma bring a tort action against CCC in federal district court in Idaho. They allege the above facts. Wallace seeks \$50,000 in damages and Norma seeks \$40,000 in damages. They allege jurisdiction based on diversity. CCC moves to dismiss for lack of subject matter jurisdiction. What is the likely result?

A. Motion granted, because Wallace and Norma cannot aggregate their claims to meet the amount-in-controversy requirement.

B. Motion granted, because Wallace and Norma are not diverse.

C. Motion granted, because there is no diversity jurisdiction in light of the well-pleaded complaint rule.

D. Motion denied, because Wallace and Norma can aggregate their claims to meet the amount-in-controversy requirement.

E. Motion denied, because 28 U.S.C. §1367 allows Norma to “piggyback” on Wallace’s claim.

6. Title VII of the Civil Rights Act of 1964 (“Title VII”), a federal statute, prohibits employment discrimination based on race. Shawna, who is African-American, is fired from her job as a cashier at Wiggins, a grocery store chain. When she asks why she is being fired, her supervisor (who made the decision to fire her) tells her that she is being fired solely because she had four unexcused absences from work in the preceding three months. Her supervisor points out that the Wiggins employee handbook states that any employee who has more than three unexcused absences in a three-month period is subject to dismissal.

Shawna sues Wiggins in federal district court and alleges that she was fired because of her race. The case is tried by jury. The parties agree that Shawna has the burden of proving that Wiggins fired her because of her race.

Shawna presents no witness who can directly testify as to the reason she was fired. She presents evidence that in the year before Shawna was fired, three white cashiers who had four or more unexcused absences in a three-month period were not fired, but were given warnings to improve their attendance at work, while another African-American cashier was fired for having four unexcused absences in a three-month period. Shawna also presents evidence that her supervisor frequently told racist jokes and referred to African-American cashiers as “lazy,” an adjective he never used to describe white cashiers.

Wiggins presents testimony from Shawna’s supervisor, who testifies that Shawna was fired solely because of her four unexcused absences. Wiggins also introduces its employee handbook into evidence.

At the close of evidence, counsel for Wiggins moves for JMOL under Rule 50(a) on the ground that Shawna has failed to present evidence that she was fired on the basis of her race. The trial court denies this motion and submits the case to the jury. The jury returns a verdict for Shawna. Counsel for Wiggins again moves for JMOL, this time under Rule 50(b). What is the likely outcome of this motion?

A. Denied, because if the court thought that the record justified granting rule 50(b) JMOL

for the defendant, it would have granted the defendant's Rule 50(a) JMOL motion.

B. Denied, because JMOL cannot be granted under Rule 50(b) if the record contains sufficient evidence supporting the jury's verdict.

C. Denied, because a defendant cannot make a motion for JMOL under Rule 50(b) if it has previously made a motion for JMOL under Rule 50(a).

D. Granted, because the court can grant a JMOL motion if the side with the burden of proof presents no evidence on a point that that side must establish to win.

E. Granted, because a court can grant JMOL if the verdict is against the weight of the evidence.

7. David, a citizen and resident of Connecticut, commutes into New York City, New York for his work as a surgeon. He performs an operation on Peter, who is also a citizen of Connecticut, in New York City. The operation does not go well and Peter is injured. Peter sues David in state court in Connecticut for \$50,000 in damages for malpractice. A process server personally serves process on David while David is at work in New York City. David appears specially and moves to dismiss for lack of personal jurisdiction. What is the likely result?

A. Motion granted, because Peter's claim against David is unrelated to David's contacts with the forum state.

B. Motion granted, because David did not purposefully avail himself of the benefits of Connecticut law by performing surgery in New York.

C. Motion granted, because process from a Connecticut state court cannot be served on a defendant in New York.

D. Motion denied, because David has purposefully availed himself of the benefits of the forum state's law, and Peter's claim against David is related to David's contacts with the forum state.

E. Motion denied, because the forum state has general personal jurisdiction over David.

8. Min, a citizen of Vermont, drives to Missouri and gets into a car accident with Lisa, a citizen of Missouri. Min is injured. Lisa is not injured. Min sues Lisa in federal district court in Missouri. He claims \$100,000 in damages from the car accident. Jurisdiction is based on diversity.

The case is tried by jury. The parties agree that the case is governed by the tort law of Missouri. Missouri is a "pure" comparative negligence jurisdiction, so if negligence by both parties contributes to the plaintiff's injuries, the plaintiff recovers the plaintiff's total damages multiplied by the defendant's percentage of fault, regardless of who is more at fault for the plaintiff's injuries.

The parties present conflicting evidence as to who was at fault. Min presents evidence that he suffered \$100,000 in damages. Lisa presents evidence that Min's damages were not as great as he claimed. There is sufficient evidence before the jury to support a finding that either party was or was not negligent, to support any apportionment of the responsibility for the accident between the two parties, and to support any amount of damages for Min up to \$100,000. Neither party moves for JMOL under Rule 50(a).

The court instructs the jury on the law of comparative negligence. The court requires the jury to fill out the following verdict form (questions in regular type, jury's answers in **bold**):

1. Did negligence by the defendant contribute to the plaintiff's injuries?	Yes.
2. Did negligence by the plaintiff contribute to the plaintiff's injuries?	Yes.
3. What were the plaintiff's and defendant's relative degrees of responsibility for the plaintiff's injuries?	Plaintiff was 60 % at fault; Defendant was 40 % at fault.
4, What were the plaintiff's total damages?	\$100,000
What is your general verdict?	For the plaintiff in the amount of \$60,000.

When the verdict form is opened, and while the jury is still present, Lisa asserts that the general verdict is inconsistent with the answers to questions. She observes that the jury appears to have arrived at its general verdict by multiplying the plaintiff's total damages by the *plaintiff's* amount of fault instead of multiplying it by the *defendant's* amount of fault.

Which of the following is true?

A. The court must enter judgment for Min in the amount of \$60,000, because the court must assume that the jury followed its instructions and the court has a duty to harmonize the jury's answers with its general verdict.

B. The court must enter judgment for Min in the amount of \$60,000, because Lisa cannot challenge the jury's verdict under Rule 50(b) after she failed to move for JMOL under Rule 50(a).

C. The court may (but is not required to) enter judgment for Min in the amount of \$60,000, because the court may enter judgment on the general verdict, disregarding the answers.

D. The court may (but is not required to) enter judgment for Min in the amount of \$40,000, because the court may enter judgment on the answers, disregarding the general verdict.

E. The court must enter judgment for Min in the amount of \$40,000.

9. Parvati, a citizen of Michigan, sues Douglas, a citizen of Wisconsin, in federal district court in Wisconsin. Parvati alleges that Douglas hosted a party at his home at which alcohol was served, and that Douglas negligently allowed his guest Gene to drive when leaving the party even though Gene was clearly intoxicated, with the result that Gene caused an accident in which Parvati was seriously injured. Jurisdiction is based on diversity.

The parties agree that the case is governed by the law of Wisconsin. Douglas moves to dismiss the case under Federal Rule 12(b)(6) on the ground that the law of Wisconsin does not impose liability on an individual who hosts a private social event at his home for injuries caused by guests driving away from the event while intoxicated, no matter how clear it was that the guest was intoxicated. Parvati opposes the motion and argues that Wisconsin law does impose liability on social hosts in that situation.

After considering the parties' arguments, the district court grants the motion to dismiss and enters judgment for the defendant. Parvati immediately files an appeal. The judges of the court of

appeals believe that the issue of whether Wisconsin law imposes liability in this situation is a close, difficult question on which reasonable people could differ, but ultimately they believe the district court's ruling was incorrect and the court should have denied the motion to dismiss. What should the court of appeals do?

- A. Affirm the judgment, because the issue involved is one as to which review is deferential.
- B. Reverse the judgment, because the issue involved is one as to which review is de novo.
- C. Affirm the judgment, because the district court's error was harmless.
- D. Affirm the judgment, because Parvati did not properly preserve the error for appellate review.
- E. Dismiss the appeal, because the order appealed from is not appealable.

10. Enormous Corporation ("Enormous"), a corporate citizen of California, sues Tiny Corporation ("Tiny"), a corporate citizen of Florida, in federal district court in Florida. Enormous alleges that it lent Tiny \$1 million and that Tiny has not repaid the money even though the loan is past due. Tiny answers the complaint. In its answer, Tiny denies having failed to repay the money. Tiny also asserts a counterclaim. The counterclaim asserts that Enormous violated the federal Patent Act by infringing a patent owned by Tiny, thereby damaging Tiny in the amount of \$50,000.

Which of the following is true?

- A. The joinder rules do not permit Tiny to assert this counterclaim because it does not arise out of the same transaction or occurrence as the claim by Enormous against Tiny.
- B. The counterclaim should be dismissed for lack of subject matter jurisdiction because it does not meet the amount-in-controversy requirement.
- C. The counterclaim should be dismissed for lack of subject matter jurisdiction because it does not satisfy the well-pleaded complaint rule.
- D. The joinder rules permit Tiny to assert this counterclaim even though it does not arise out of the same transaction or occurrence as the claim by Enormous against Tiny.
- E. The joinder rules permit Tiny to assert this counterclaim because it does arise out of the same transaction or occurrence as the claim by Enormous against Tiny.

END OF EXAM