

Gilles' Spring 1993 Final Exam

MULTIPLE CHOICE ANSWER SHEET

CIRCLE THE APPROPRIATE LETTER IMMEDIATELY TO THE RIGHT OF EACH NUMBER.

Question No. Alternative Answers (Circle the correct answer)

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|-----|---|---|---|---|---|
| 1. | A | B | C | D | E |
| 2. | A | B | C | D | E |
| 3. | A | B | C | D | E |
| 4. | A | B | C | D | E |
| 5. | A | B | C | D | E |
| 6. | A | B | C | D | E |
| 7. | A | B | C | D | E |
| 8. | A | B | C | D | E |
| 9. | A | B | C | D | E |
| 10. | A | B | C | D | E |
| 11. | A | B | C | D | E |
| 12. | A | B | C | D | E |
| 13. | A | B | C | D | E |
| 14. | A | B | C | D | E |
| 15. | A | B | C | D | E |
| 16. | A | B | C | D | E |
| 17. | A | B | C | D | E |
| 18. | A | B | C | D | E |
| 19. | A | B | C | D | E |
| 20. | A | B | C | D | E |
| 21. | A | B | C | D | E |
| 22. | A | B | C | D | E |
| 23. | A | B | C | D | E |
| 24. | A | B | C | D | E |
| 25. | A | B | C | D | E |

DO NOT SEPARATE THIS ANSWER SHEET FROM THE REMAINDER OF THE EXAM. THE ENTIRE EXAM BOOKLET -- THE ANSWER SHEET AND THE QUESTIONS -- MUST BE RETURNED TO THE INSTRUCTOR.

PART ONE -- MULTIPLE CHOICE
(ONE HOUR)

INSTRUCTIONS:

1. Part One consists of a series of 25 multiple choice questions. It counts for one third of your grade.
2. Make sure that your examination number appears in the upper right-hand corner of every page (there are 28 pages).
3. Do not qualify your answer in any way. If you think that an entire question is inherently misleading or contains an internal

inconsistency, you may so state on the reverse side of the answer sheet. Identify the question by number and give your reasons. If I agree with you, I will discard the question completely for the entire class. Even if you feel that a question should be discarded, answer it anyway.

4. Any reference to a "Rule" is a reference to a rule of the Federal Rules of Civil Procedure or of the Rules of Appellate Procedure as in force, today, May 1, 1993.
5. Presume that all the questions are set in FEDERAL COURT unless you are expressly told otherwise. Presume that VENUE IS PROPER in all the questions unless you are expressly told otherwise.

ONLY QUESTIONS 1 to 18 are released.

MULTIPLE CHOICE

1. On January 23, 1993 John Adams, Esq., counsel for plaintiff Amy Buckston, decides to file a motion for summary judgment pursuant to Rule 56. Adams drafts the motion and accompanying brief and signs both. Adams has an emergency call from another client and is forced to leave the office. He leaves a message requesting his associate Madison to pick up the brief from Adams' desk, shepardize the cited cases that afternoon and leave it on Adams' desk to file the next day. Madison never gets the message. When Adams comes in the next day he presumes the brief has been shepardized and files it. Prior to any response from counsel for the defendant, the Court realizes that the principal case relied on by Adams in his brief has been overruled. The Court:

- A: should not impose any sanction because no one acted in bad faith.
- B: should not impose any sanction because no motion for sanctions has been made.
- C: must award sanctions against Madison or Adams, or both.
- D: must award sanctions against Adams or Buckston, or both.
- E: should not impose any sanction because Rule 11 does not cover briefs, only pleadings, motions, and papers.

2. Plaintiff Latrec filed a tort action for damages in Texas state court against defendant Toulouse. Because the criteria for diversity jurisdiction were met the defendant removed the action to federal district court. At the time the removal occurred neither party had demanded a jury trial and in fact Texas law did not require a party to demand a jury trial until the final pre-trial conference always held two weeks prior to trial. At the time of removal neither party filed a jury demand, but six months later (three weeks prior to trial) plaintiff filed a demand for jury trial. The plaintiff:

- A: has no right to a jury trial because no timely demand was made.
- B: has a right to a jury trial because no jury trial demand is required if a case is removed from state court.
- C: has a right to a jury trial because plaintiff's jury trial demand was timely under Texas law.
- D: has no right to a jury trial because a jury trial is not permitted if a jury trial demand has not been made prior to removal.
- E: has a right to a jury trial because the case was removed prior to the time Texas law required a jury trial demand to be made.

3. On June 3, 1992, Jane, an Ohio resident, and Jack (a Idaho resident who is traveling through Ohio on vacation), are involved in an automobile accident on High Street in Columbus. Jane sues Jack in Ohio for her injuries (\$500,000).

Jack consults you. He claims that the accident was Jane's fault. He was injured in the crash (estimated damages are \$30,000, hereinafter the "injury claim"). In a surprising twist of fate, it turns out that Jane also owes Jack \$5,000 for the sale of potatoes in 1990 (hereinafter the "potato claim"). Jack wants to know which of the claims he must or may assert in the pending lawsuit:

- A: Jack must assert his injury claim, and may assert his potato claim.
- B: Jack cannot assert either claim.
- C: Jack must assert his injury claim, but cannot assert his potato claim.
- D: Since Jack is only visiting Ohio, Jack is not required to, but may, assert either claim.
- E: Jack must assert both claims.

4. Plaintiff Schubert sues defendant Mozart for personal injuries arising from a two car collision. The case is tried to a jury and at the close of all the evidence both sides make motions for judgment as a matter of law (directed verdict motions) and both are denied. The jury returns a verdict for plaintiff Schubert. Defendant Mozart then files a timely motion for judgment as a matter of law (JNOV motion) or in the alternative a new trial. The trial court rules in defendant Mozart's favor on both these requests. Plaintiff appeals this decision in its entirety. The court of appeals finds that the trial court erred in granting judgment as a matter of law (JNOV) to defendant but makes no ruling on the new trial issue. The trial court should:

- A: allow the plaintiff to file a motion for new trial.
- B: instruct the parties to re-petition the court of appeals for a ruling on the new trial motion since the trial court cannot proceed until that motion is ruled on.
- C: proceed with the new trial.
- D: reconsider the new trial issue.
- E: dismiss the case as the grant of judgment as a matter of law was overruled.

5. Plato Bank (a Texas corporation with its principal place of business in Texas) holds \$1 million for a John Dalton. On Dalton's death three heirs all claim they are entitled to the fund. Plato Bank files an interpleader suit in federal court (where venue and personal jurisdiction are proper) under both Rule 22 and 28 U.S.C. 1335. The three claimants to the money are all Ohio citizens. The bank claims it is entitled to a \$500 service charge for administering the fund for the past year. The court should:

- A: dismiss the Rule 22 action for lack of subject matter jurisdiction, but retain the 28 U.S.C. 1335 action.
- B: dismiss the 28 U.S.C. 1335 action for lack of subject matter jurisdiction, but retain the Rule 22 action.
- C: allow both causes of action.

- D: dismiss both causes of action for lack subject matter jurisdiction.
- E: dismiss both causes of action because Plato Bank claims an interest in the fund.

6. Plaintiff Bart filed suit in federal court against defendant Homer for breach of contract. Bart wins at trial but is awarded only \$28,000, half of the damage amount he sought. Judgment is entered in Bart's favor on April 1, 1992, and both Homer and Bart receive notice of the judgment entry by mail on April 5, 1992. Homer files a notice of appeal with the clerk of the court of appeals on April 29, 1992, and Bart files a notice of appeal on May 4, 1992 with the district court. The court of appeals should:

- A: dismiss Homer's appeal as filed in the wrong court, and dismiss Bart's appeal as untimely.
- B: allow Homer's appeal as timely and dismiss Bart's appeal as untimely.
- C: allow both appeals as timely filed because both were filed within 30 days of receipt of notice of judgment.
- D: dismiss Homer's appeal as filed in the wrong court, and allow Bart's appeal as timely.
- E: allow both appeals as timely filed because Bart's notice of appeal was filed within fourteen days of Homer's timely notice of appeal.

7. Plaintiff Magregor, through his attorney Rob Roy, filed an action alleging that defendant Potomac, a water treatment company, violated Title VII by discriminating against americans of scottish heritage. Two weeks after filing Rob Roy discovered that the factual assertions on which the complaint was based were false. Roy had relied on the information supplied by his client, Magregor, an employee at Potomac, who, Roy later discovered, was mentally unbalanced and given to paranoid delusions of persecution. Immediately on discovering this, twenty two days after filing the complaint and before any answer or motion had been filed by defendant Potomac, Roy voluntarily dismissed the complaint under Rule 41(a). Three days later defendant filed a Rule 11 motion for sanctions asking for \$30,000, the cost, it claimed, of its attorneys preparing to defend the case. After an appropriate hearing the trial court ordered that Roy to take out a notice at his own expense in the local paper acknowledging that the suit was frivolous and apologizing to Potomac. Both sides appeal this order. On appeal:

- A: the sanction order should be overruled because the trial court lacked jurisdiction over the case once the dismissal was filed.
- B: the sanction order should be upheld because the trial court had jurisdiction because the Rule 41(a) dismissal was untimely.
- C: the sanction order should be upheld if the Court of Appeals finds after de novo review that Roy failed to conduct a reasonable enquiry into whether the complaint was well grounded in fact.

- D: the sanction order should be overruled if the Court of Appeals finds that the trial court abused its discretion by not awarding the \$30,000 sought.
- E: the sanction order should be upheld if the Court of Appeals finds that the trial court abused its discretion in finding that Roy failed to conduct a reasonable enquiry into whether the complaint was well grounded in fact.

8. Plaintiff Hawthorne (a citizen of Ohio) files a diversity suit in federal court for \$100,000 against defendants Twain (a citizen of Texas) and O'Neill (a citizen of Maine), two building contractors who had contracted with Hawthorne to build his new home. Twain was to do the foundation work and O'Neill was to do the remainder. O'Neill claims that the failure to timely complete the work was caused solely by Twain's total failure to complete the foundation work and thus Twain alone should be liable for the \$100,000. O'Neill:

- A: must implead Twain since Twain is or may be liable to O'Neill for all or part of O'Neill's liability to plaintiff Hawthorne.
- B: may implead Twain since Twain is or may be liable to O'Neill for all or part of O'Neill's liability to plaintiff Hawthorne.
- C: must file a crossclaim against Twain.
- D: may file a crossclaim against Twain.
- E: must pursue this claim in a separate suit as the court lacks jurisdiction.

9. Plaintiff Strauss sues defendant Danube in federal court. Neither party requests a jury and the case is tried to the judge alone. At the end of the trial the court reads into the record its conclusions of law and denies all the relief sought by plaintiff Strauss. The court makes no factual findings other than to state that "on the facts shown plaintiff was not entitled to recover." Neither party had moved the court requesting factual findings be made. The clerk without consulting the court makes up a separate judgment entry and enters it in the civil docket. Plaintiff Strauss appeals. Strauss' best argument on appeal is that:

- A: the judgment is invalid because it was oral and not in writing.
- B: the judgment is invalid because there are no findings of fact.
- C: he has none because he failed to request findings of fact or conclusions of law be given.
- D: the judgment is invalid because the judgment is contained in a separate document.
- E: the judgment is invalid because the clerk did not consult with the court before entering judgment.

10. Plaintiff Missy Mendelson is seeking damages for an alleged assault on her by defendant Chris. During the discovery stage of the case Chris learned that Missy's attorney had interviewed the three witnesses of the alleged assault. Missy's attorney, in preparing for trial, had made notes of each of these interviews. These notes simply reflect the witnesses' accounts of what occurred. Two of the witnesses still live in town but one, Martha, has died. Chris files an interrogatory requesting Missy to identify any person she knows witnessed the alleged assault. Chris also files a document request asking for any documents, notes or any other record of statements by these witnesses. Missy refuses to reveal the names of the witnesses or to produce the requested notes on the grounds of attorney work product. Chris moves to compel. The court should:

- A: order the names revealed; and order the requested notes produced if Chris makes a showing of substantial need of the notes and that he is unable without undue hardship to obtain the substantial equivalent of the notes by other means.
- B: sustain both objections.
- C: order the names revealed and the requested documents produced.
- D: order the names revealed but sustain the objection to the production of documents because the notes are work product and never discoverable.
- E: order the names revealed; and order the requested notes produced unless Missy makes a showing that Chris lacks any substantial need for the notes and can without undue hardship obtain the substantial equivalent of the notes by other means.

11. Plaintiff Bronte files an action against Defendant Scott for breach of contract. The complaint claims damages totalling \$60,000. Defendant Scott files an answer denying any liability and the case is set for trial. On the trial date neither defendant Scott nor his counsel show up. After discussion with plaintiff's counsel the court entered default judgment for plaintiff in the amount of \$77,000 (the amount plaintiff now calculates to be owed to him). Three days later defendant Scott learns of the judgment entry, and hires new counsel who file a timely appeal raising all of the issues set out below. The court of appeals should:

- A: affirm the default judgment.
- B: overturn the default judgment as 3 days notice of the default hearing was not given.
- C: overturn the default judgment because the amount awarded was greater than the amount sought in the complaint.
- D: overturn the default judgment for the reasons set out in B and C.
- E: overturn the default judgment because there was no default and the judgment cannot be sustained on the merits because plaintiff did not put on evidence to support his claim.

12. Plaintiff Macdonald, a New Mexico citizen, is riding his lawn tractor one sunny day in May when it explodes. He luckily escapes injury. The only harm he suffers is the damage to the tractor and to his lawn. Macdonald's insurance company, Ohiowide a corporation which has its principal place of business and is incorporated in Ohio, but has minimum contacts with all of the States, pays Macdonald \$60,000 (covering the cost of repairing the tractor and reurfing the lawn). Macdonald files suit for the harm he incurred against the lawn tractor manufacturer, Sporzan tractors (a corporation having its principal place of business and being incorporated in Ohio, and having minimum contacts with New Mexico) in New Mexico. Sporzan moves to dismiss on appropriate grounds. The court should:

- A: deny the dismissal but order Ohiowide to be joined because it is a person who must be joined if feasible under Rule 19(a).
- B: grant the dismissal because although Ohiowide is a person who must be joined if feasible, it cannot be joined and is indispensable under Rule 19(b).

- C: grant the dismissal because Macdonald is not the real party in interest and Ohiodide cannot be substituted.
- D: deny the dismissal and order Ohiodide to be substituted within a reasonable period.
- E: deny the dismissal because Ohiodide is merely a party who may be joined under Rule 20.

13. Plaintiff Rembrandt from Ohio sues defendant Van Gogh California in federal court for \$200,000 for personal injuries suffered by Rembrandt in a boating accident. Defendant learns that plaintiff intends to call at trial a Captain L. J. Silver, a renowned expert in boating procedures. Defendant is anxious to depose Silver. To accomplish such a deposition defendant must:

- A: file a motion with the court demonstrating exceptional circumstances under which it is impractical for defendant to obtain facts and opinions on the same subject by other means.
- B: serve a notice of deposition on Captain Silver.
- C: serve a Rule 45 subpoena for the deposition of Captain Silver.
- D: serve interrogatories on plaintiff requesting the identity of any experts he will call at trial and the subject matter, substance and grounds of their opinions, and then move the court showing that additional discovery is appropriate.
- E: serve interrogatories on plaintiff requesting the identity of any experts he will call at trial and the subject matter, substance and grounds of their opinions, and then move the court showing that exceptional circumstances exist mandating the additional discovery.

14. Chopin files a class action on behalf of shoppers at Music Mart alleging that Music Mart has repeatedly refused to take back defective musical instruments in breach of the express terms of its sales contract. The complaint seeks money damages alone. Chopin requests a jury trial. Music Mart moves to strike the jury trial demand pointing out, correctly, that a class action is a creation of equity. The court should:

- A: grant Music Mart's motion because a class action is a creature of equity.
- B: grant Music Mart's motion because the underlying claim is a contract claim for money damages and thus would have been equitable historically.
- C: deny Music Mart's motion because issues of law predominate.
- D: deny Music Mart's motion because the underlying claim is a contract claim for money damages and thus would have been at law historically.
- E: grant Music Mart's motion because the underlying claim is a contract claim for money damages and thus would have been at law historically.

15. Consider the following criteria:

- i. conclusively determine the disputed question.
- ii. resolve an important issue completely separate from the merits of the action.
- iii. be clearly erroneous as a

matter of law.

- iv. raise an oft repeated error or manifest persistent disregard for the federal rules.
- v. be effectively unreviewable on appeal from final judgment.
- vi. raise a controlling question of law as to which there is substantial grounds for difference of opinion.

To be immediately appealable as a collateral order under the test set out by the Supreme Court in Cohen, the order must comply with which of the above criteria?

- A: i, ii, and v.
- B: i, ii, and iii and v.
- C: i, iii and iv.
- D: iii, v, and vi.
- E: iii, iv, and v.

16. You are clerking for Federal District Court Judge Susan Bronte. After two weeks of trial the jury has returned a verdict for plaintiff. Prior to the verdict at the close of evidence both sides moved for judgment as a matter of law (directed verdict motion) and within 4 days after entry of judgment defendant filed a motion for judgment as a matter of law (JNOV motion) or in the alternative a new trial on numerous grounds. Judge Bronte explains to you that of all the grounds raised in defendant's motion the only one which strikes her as meritorious is the fact that the only evidence plaintiff put on to support his case was his own testimony which while sufficient to meet his burden of proof was, in the judge's eyes, clearly perjured. Judge Bronte asks you to check if she can grant judgment as a matter of law for defendant and/or a new trial on this ground. Your research shows:

- A: the court cannot grant either motion because the motions were untimely.
- B: the court can grant judgment as a matter of law and conditionally grant a new trial.
- C: the court cannot grant judgment as a matter of law, but can grant a new trial.
- D: the court can grant judgment as a matter of law but cannot grant a new trial.
- E: the court cannot grant either motion because there was a legally sufficient evidentiary basis for a reasonable jury to have found for the plaintiff.

17. A 1990 Act of Congress creates a federal cause of action for discrimination against handicapped persons. As part of the enforcement provisions it specifically allows an individual who is discriminated against under the Act to file a civil suit for damages and for an injunction to prohibit future discrimination. The Act states such an action "shall be tried in its entirety to a jury". Mozart files suit in federal court under the Act seeking \$40,000 in damages and an injunction against defendant Beethoven. Mozart requests a jury trial on both issues. The District Court should:

- A: allow a jury trial as to the claim for damages but deny a jury trial on the claim for an injunction.
- B: deny a jury trial as to all issues.
- C: allow a jury trial as to all issues.

- D: allow a jury trial as to the claim for damages but deny a jury trial on the claim for an injunction, and try the damages claim first.
- E: allow a jury trial as to the claim for an injunction but deny a jury trial on the claim for damages.

18. Plaintiff Chopin obtains a verdict for \$2 million against Defendant Defoe for the injuries Chopin received when Defoe allegedly ran a red light and struck Chopin as she crossed the road. The testimony at the trial was somewhat contradictory. Although Defoe had testified that the light was green, both Chopin and her friend Dickens testified it was red. Eleven months later Dickens admitted that she lied when she testified that the light was red. Two weeks after Dickens' admission, Defoe moves for a new trial or to have the judgment set aside. The court should:

- A: order a new trial under Rule 59.
- B: grant relief from judgment under Rule 60(b).
- C: deny relief from judgment under Rule 60(b) because the fraud was intrinsic.
- D: deny relief from judgment under Rule 60(b) as six months have passed since the judgment entry.
- E: grant relief from judgment under Rule 60(b) because the fraud was extrinsic.

QUESTIONS 18 25 ARE NOT RELEASED.

**PART TWO - SHORT ANSWER QUESTIONS
(TWO HOURS)**

INSTRUCTIONS:

1. Part Two consists of four questions, several of which have sub-parts. The total points for each question are set out at the top of each question. Part Two counts for two thirds of your grade.
2. Write your answer only in the space provided.
3. Discuss each issue fairly raised by a fact pattern, even if your conclusion on one issue within the fact pattern seems to make discussion of another issue unnecessary. For instance, if you conclude that a party is not necessary under Rule 19(a), it would nonetheless be prudent to go on to discuss if he/she is indispensable under Rule 19(b).
4. Any reference to a "Rule" is a reference to a rule of the Federal Rules of Civil Procedure or of the Rules of Appellate Procedure, as in force, today, May 1, 1993.
5. Presume that all the questions are set in FEDERAL COURT unless you are expressly told otherwise. Presume that VENUE IS PROPER in all the questions unless you are expressly told otherwise.

SHORT ANSWER QUESTIONS

[IN EACH OF YOUR ANSWERS MAKE SURE THAT YOU CITE TO THE RELEVANT RULE OR RULES (INCLUDING SUBSECTION) IN THE SPACE PROVIDED, AND EXPLAIN HOW THE RULE(S) APPLIES. IT IS ADVISABLE TO READ ALL THE QUESTIONS FOLLOWING A FACT PATTERN BEFORE ANSWERING.]

QUESTION 1 - Total Points 20

Plaintiff Joplin, a pianist, filed suit for \$60 million dollars in

federal court for the injury to his fingers caused by defendant doctor Presley's alleged negligence during surgery. After a grueling 30 day trial the jury announces its verdict on March 15, 1993. It awards plaintiff \$2 million dollars.

Presley's counsel (Ron Sellig, Esq.) had made a motion for judgment as a matter of law at the close of evidence (directed verdict motion). He believes this motion is very strong because the plaintiff failed to put on any proof of damages. The trial court however denied this motion.

It is Sellig's belief that his motion for judgment as a matter of law prior to verdict (directed verdict motion) automatically renews itself after the verdict. Sellig therefore leaves the country immediately after the verdict is announced. Three weeks later, after a well earned rest in the Bahamas, Sellig returns and calls the court to see if it has granted judgment in his client's favor yet! To his dismay the court informs him that it entered judgment on the verdict in favor of plaintiff on April 1, 1993. Sellig calls you desperate for help. It is now April 15, 1993. How would you advise him on the following proposals:

A: Sellig's first idea is to file a motion for new trial or a motion for judgment as a matter of law post verdict (JNOV motion). Can he?

Rule(s) _____

Would your answer change if plaintiff agrees to a ten day extension of time for the filing of such a motion?

Rule(s) _____

B: The second option Sellig asks your advice on, is to instead file a motion to set aside the judgment arguing that his mistake as to the need to renew his motion for judgment as a matter of law after the verdict (JNOV motion) was excusable neglect. Would such a motion be likely to succeed ?

Rule(s) _____

When would such a motion be due?

Rule(s) _____

C: The third option Sellig asks your advice on, is to instead file an appeal. When would the notice of appeal be due?

Rule(s) _____

seeking to recover \$500,000 in damages. Presume personal and subject matter jurisdiction are proper. The complaint alleges that Sawyers struck Doyle when Doyle stepped onto the road in front of Sawyers' truck. Doyle claims that he was injured in the leg and the back and suffers continuing pain from both. In the course of litigation the discovery listed below is propounded. Discuss which, if any, should be allowed under the Rules.

A: Plaintiff Doyle propounds interrogatories to defendant Sawyers asking if Sawyers has any insurance, or has applied for any insurance, which might cover Sawyers' liability in part or in whole for any judgment rendered in Doyle's favor, and if so the terms of the insurance policy and application for insurance. Sawyers objects correctly pointing out that the requested information will not be admissible at trial. Should the discovery be allowed?

Rule(s) _____

B: Defendant Sawyers files a motion for a physical examination and an eye examination of plaintiff Doyle. Should the court grant this motion?

Rule(s) _____

C: Presume the motion is granted and the court orders Doyle to undergo both examinations. At the end of the examinations defendant Sawyers, without being asked, gives Doyle a copy of the examination reports. Defendant Sawyers then demands to see any and all reports from a physical and an eye test that Doyle had undergone as part of his routine check up three years prior to the accident. Doyle refuses to produce them claiming doctor/client privilege and arguing that he is not required to produce them under the Rules. What if anything is Doyle required to produce?

Rule(s) _____
