

# FAMILY CIVIL PROCEDURE I

## Essay 1

*This essay question is worth 40% of your grade.*

Jessica, Ashlee and Hilary attended a fabulous party in Los Angeles at the Famous Club. Jessica and Ashlee tried to avoid Hilary because they heard that Hilary had been spreading unflattering rumors about Jessica and Ashlee all over town. At one point during the night, Hilary walked past Jessica and Ashlee and murmured something under her breath. Jessica and Ashlee could not hear what Hilary said. They decided to ignore her and to keep clear of her. Jessica and Ashlee were deep in conversation with Justin and Cameron when Jessica caught sight of Hilary out of the corner of her eye. Hilary was glaring at her. Jessica had had enough and she marched over towards Hilary. Ashlee excused herself and followed Jessica. Jessica asked Hilary, "What is your problem? Why are you always trying to make trouble for myself and Ashlee?" Hilary grew beet red with anger and hurled insults at Jessica and Ashlee. Jessica and Ashlee were shocked and attempted to walk away. But the club was very crowded and Jessica and Ashlee simultaneously ran into Hilary. Hilary fell backwards and she landed face-down on a table in the VIP section. As she fell, some security guards employed by the Famous Club were standing nearby. They laughed and did not attempt to break her fall. An ambulance arrived on the scene and rushed Hilary to the hospital. She suffered from several serious cuts, including one on her face that required ten stitches. She also broke her leg.

As a result of her injuries, Hilary had to pull out of a movie she was scheduled to begin filming and she had to delay the release of her new album. She consulted with her attorney and decided to file a lawsuit to collect money for her damages. She filed a complaint against Jessica and the Famous Club. In specific, Hilary filed a tort claim against Jessica which alleged that Jessica negligently knocked down Hilary and a tort claim against the Famous Club for failure to provide adequate security which caused her injuries.

Jessica's attorney received Hilary's complaint and is considering whether to file a motion to dismiss under Federal Rule of Civil Procedure 12(b)(7). Jessica's attorney believes that Hilary's complaint should be dismissed because Hilary did not join Ashlee to the lawsuit. Jessica's attorney also believes that service of process was insufficient, but she wants to wait to raise that defense until after the court resolves her motion to dismiss under Rule 12(b)(7).

You went to law school with Jessica's attorney and you are a civil procedure expert.

- A. Advise Jessica's attorney on the chances of succeeding with her motion to dismiss under Federal Rule of Civil Procedure 12(b)(7).
- B. No matter your analysis in A, advise Jessica's attorney of another method of bringing Ashlee into the lawsuit.
- C. No matter your analysis in A or B, advise Jessica's attorney whether it is a good idea for her to wait to raise the service of process defense until after the court resolves her motion to dismiss under Rule 12(b)(7).

The examination continues on the next page.