Civil Procedure I: Final Examination (January 12, 1970)

William & Mary Law School
1. Owens signed, sealed, acknowledged and delivered to P a general warranty deed whereby the fee simple title to Blackacre was conveyed to P. P then entered into a ten year lease with tenant whereby tenant was granted the exclusive possession and use of the property during the term of the lease. Blackacre was a wooded tract of approximately 100 acres which was used exclusively for hunting purposes. D (I), who also claimed the fee simple title to Blackacre, although this fact was not known by Owens, had used the property for hunting purposes for a period of 25 years. D (I), not knowing of Owens' or P's claim of ownership, sold and conveyed the timber on Blackacre to D (2). D (2) entered Blackacre and cut and removed most of the timber. P thereupon brought an action of trespass against D (2), and an action of ejectment against D (I). What would the result be in each case? Give reasons to support your conclusions.

2. P agreed to transfer possession and title to a certain 1965 Ford sedan parked immediately behind the Law School to D in consideration of D's promise to pay $1,000.00 upon delivery. D, however, became so interested in his law school studies, particularly procedure, that he decided that he would not have time to use the automobile and accordingly informed P that he was withdrawing from the contract. (a) What rights does P have against D, and what procedure would P use to enforce his rights? (b) Assume that P delivered the automobile to D in accordance with the agreement, but that D refused to pay $1,000 to P, what rights does P have against D, and what procedure would P use to enforce his rights?

3. P and D both knew that Blackacre was for sale for $20,000.00 and that the area in which Blackacre was situated was developing rapidly. They, therefore agreed that each would put up $10,000.00, and that D would take the $20,000 and purchase Blackacre from the owner. While D was waiting in the owner's reception room, D commenced a conversation with T who was also waiting to see the owner. D and T learned that both of them wanted to purchase Blackacre; therefore to avoid competition with each other, T paid D $10,000.00 to leave and not to compete with him. D returned P's $10,000.00 to P and told P that T had already purchased Blackacre before he had an opportunity to do so. P thereupon brought a suit against D seeking an accounting of the $10,000.00 profit. What result would be reached in classical procedure, under code pleading, and under the present system of federal procedure? Give reasons for your conclusions.

4. P, a citizen of New York and a minority stockholder in the D Corporation, brought a derivative suit for $25,000 damages in a United States District Court in New Jersey against the D Corporation, which was formed under the laws of the State of New Jersey and maintained its principal place of business in New Jersey, and the five members (A, B, C, D and E) of the Board of Directors, in which P alleged that the five directors had defrauded the corporation of $25,000. A, B, and C were born in New York City, resided in Philadelphia and were served with process in New Jersey. D and E were born in New Jersey, resided in California and were served with process in California. (a) Does the court have jurisdiction? Explain why. (b) A New Jersey law requires the plaintiff in a derivative suit to put up a bond in the amount to be set by the court to indemnify the defendants against costs in the event the defendants prevail. Should the court require such a bond? Why?

5. P, a citizen of Virginia, while operating a motor vehicle in California was involved in a collision with a motor vehicle operated by D, a citizen of California, in which collision P received serious and permanent injuries. In the discussion following the accident D remarked that he was planning to attend a convention next month in Virginia. P informed his attorney in Virginia that D would be there next month, and to prepare suit papers so that the suit could be commenced.
and process served on D when he arrived in Virginia. The attorney followed instruc-
tions, prepared the suit papers, brought the action in a Virginia court and
caused the process to be served on D when he arrived in Virginia. Three days
after D was served with process, D retained you to represent him and informed you
that it would be much better to try the case in California. What would you do? Why?

6. A North Carolina statute provides for jurisdiction over foreign corporation
when the cause of action arises "out of the production, manufacture, or distribu-
tion of goods by such corporation with the reasonable expectation that those goods
are to be used or consumed in North Carolina". Representatives of the P corpora-
tion in North Carolina went to New York to purchase certain goods which were made
by the D Corporation, a New York Corporation, at its plant in New York. After the
goods were purchased from the D corporation, the purchaser shipped them to North
Carolina and attempted to use the goods. The D corporation had no other contact
with North Carolina. The goods proved to be defective whereupon the P corporation
brought an action for damages against the D corporation in a North Carolina court.
Process was served on the defendant in New York pursuant to a North Carolina
statute. Result? Why? Would your answer be the same under the Rhode Island
statute in your casebook?

7. P brought an action against D and the process was delivered to the Sheriff
to be served on D. The Sheriff called D on the telephone and read and explained
the process to D. The Sheriff thought that D was coming by his office to pick up
the process, but D thought that the Sheriff was going to deliver the process to him.
By mistake the process fell in the waste basket and was thrown out with the trash.
The Sheriff thought that D had picked up the process when the Sheriff was out of the
office, so the Sheriff made a return that he had delivered the process to D in person.
D made no appearance in the case whereupon judgment by default was rendered
against D. When D learned of the judgment, D brought a suit to have the judgment
declared null and void. Result? Why?

8. Debtor, a citizen of State X, one of the United States, which does not have a
long-arm statute, owes $5,000.00 to Creditor, a citizen and resident of State Y,
one of the United States. P, a citizen of State Z, one of the United States, has
a claim for $12,000.00 against Creditor. P brought an attachment proceeding
against Debtor in a state court of State X in which P alleged that Debtor owed
$4,000.00 to Creditor, and then that creditor owed $12,000.00 to P. Creditor knew
the trial judge in State X before whom the case would come, and Creditor knew fur-
ther that the trial judge would not permit a special appearance to the value of the property
attached in a quasi in rem proceeding. (a) Would removal to a federal
court enable Creditor to appear merely to the extent of the value of the property
attached? Give two reasons for your conclusions. (b) What should Creditor do?

9. D (1) who owned Blackacre left the area in 1940 and has not been heard from
since that time. P moved onto Blackacre and has occupied it claiming that D (1)
gave it to him before he left, and has continued to occupy, use and pay the taxes
on Blackacre for more than the period of the statute of limitations. P retains you
to establish his title by adverse possession. After investigation you learn nothing
concerning D (1), but you learn that D (1) has two sons, S(1), who resides at No. 3,
Green Street in Richmond, Va., and S (2) who resides at No. 3 Red Street in
Buffalo, New York. Explain the procedure which you would follow to accomplish
the objectives of your client.