Civil Procedure (A): Final Examination (May 24, 1972)

William & Mary Law School
1. Place a T or an F before each of the following statements to indicate whether the statement is true or false.

1. Pleadings serve the following purposes: (a) to narrow the issues to be tried, (b) to give notice to the parties in order to avoid surprise at the trial, (c) to give notice to the court of the nature of the case, (d) to serve as a permanent record and as a basis for res judicata, and (e) to dispose of cases without trial where pleadings reveal there are no real issues of fact to be tried.

2. Under the FRCP it is necessary to aver the capacity of a party to sue or be sued and the authority of a party to sue or be sued in a representative capacity.

3. Under the FRCP all averments of fraud, mistake, or special damages must be specifically alleged.

4. Allegations in a pleading to which a responsive pleading is required (other than unliquidated damages) are admitted when not denied in the responsive pleading.

5. Demurrers, pleas in abatement, and exceptions for insufficiency of a pleading are abolished under Code Pleading.

6. Rule 11 of the FRCP which requires every pleading of a party represented by an attorney to be signed by the attorney constitutes a rule of legal ethics as well as Civil Procedure.

7. A deliberate effort was made in drafting the rules of pleading under the FRCP to require that the complaint contain a short and plain statement of the cause of action showing that the plaintiff is entitled to relief rather than allege a claim for relief as was required under New York's Field's Code.

8. As a general rule, a defendant in an action for damages for slander should plead truth as an affirmative defense, but if the plaintiff's complaint sets forth facts constituting an absolute privilege, then the defendant may move for summary judgment without filing a responsive pleading.

9. At common law, a denial of an allegation in manner and form as the plaintiff had alleged, put in issue the details or qualifications of the allegation when they were material as well as the allegation itself.

10. The FRCP requires that each and every final judgment shall grant the relief to which a party in whose favor it is rendered shall be entitled, irrespective of whether the party has demanded such relief in his pleading.

11. The Full Faith and Credit Clause of the United States Constitution requires that each state take judicial notice of the laws of every other state in the Union.

12. A special demurrer is broader than a general demurrer.

13. A defendant who wishes to use the defense of the statute of limitations, where it is a part of the right, must plead it specially.
14. At common law certain affirmative defenses could be shown under a plea of the general issue even though such matters were not set forth in the pleading.

15. The FRCP abolished the demurrer but provided that a motion to dismiss could be used to accomplish the objectives which a demurrer previously accomplished.

16. Under the FRCP if the defendant files a counterclaim against the plaintiff, the court has ancillary jurisdiction of the counterclaim and the defendant is not required to allege grounds for jurisdiction.

17. Under the FRCP, the court may permit a party to amend a pleading even though final judgment has been rendered and the time for reopening the judgment under Rule 60(b) has expired.

18. A party under the FRCP may obtain discovery of information relevant to the issues involved in the case even though the information violates the hearsay evidence rule.

19. A deposition obtained during proper and regular discovery procedures under the FRCP is admissible in evidence in the trial of the case only if the substance of the deposition does not violate the rules of evidence.

20. A party who is ordered to submit to a physical examination under Rule 35 FRCP, and refuses to do so, may be punished for contempt of court.

21. Where the pleadings raise issues of law but not issues of fact, it is proper for either or both parties to move for summary judgment.

22. The FRCP require that a pre-trial conference be held in all cases before a jury trial.

23. Trial by jury is guaranteed by the Constitution of the United States in all cases which would have been brought under one of the common law forms of action.

24. It is not possible to obtain trial by jury under the FRCP unless one files a demand therefor in writing not later than ten days after the filing of the last pleading.

25. Any party who has the burden of going forward with the evidence on a particular issue must also have the burden of persuasion on that issue.

26. At common law nonsuits were wholly voluntary.

27. A demurrer to the evidence could not be used at common law unless the evidence of the plaintiff consisted solely of a written document.

28. Although as a practical matter courts are reluctant to grant a motion for a directed verdict at an early stage in the trial of a case, the legal standard to determine whether the motion should be granted or refused is the same at the conclusion of the plaintiff's evidence, all the evidence, and after the verdict is returned.

29. A party may not under the FRCP move for judgment notwithstanding the verdict unless he has previously moved for a directed verdict.

30. A defendant whose motion for a directed verdict at the conclusion of the plaintiff's evidence was refused, may thereafter introduce evidence, without waiving his objection to the ruling of the court on the motion.
31. The procedure for evading the result of the Slocum case was codified in the FRCP.

32. If a court grants a motion for judgment notwithstanding the verdict, the court should not rule on a motion for a new trial until the judgment is reversed by an appellate court.

33. Judges of federal courts are allowed to summarize the evidence for the jury, required to instruct the jury on the law, but are precluded from commenting on the evidence.

34. At common law a court could require a jury to continue deliberations without meat nor drink, without light nor candle, until the jury arrived at a verdict.

35. When a jury arrives at a verdict and delivers a sealed verdict to the proper court official, each member of the jury is bound by that verdict and may be punished by contempt for dissenting therefrom.

36. Under the FRCP if a party makes a motion for the jury to render a special verdict, then the court is required by virtue of the constitutional guarantee of the right to trial by jury, to make the jury render a special verdict.

37. The rule of jeofails is included in the FRCP.

38. It is not proper for an attorney to use the golden rule as a basis for argument to the jury.

39. A compromise verdict is one in which the jury compromises the issue of liability with the issue of damages and is not proper.

40. A party who accepts remittur is precluded from seeking review of the case by an appellate court.

41. Where a court docket is crowded, it is common practice for the judge thereof to refer issues to a master or referee in order to expedite the adjudication of cases and reduce the number of cases on the docket.

42. Under the FRCP a plaintiff may join as many claims as he wishes against a defendant, irrespective of whether the claims are related or not, and irrespective of whether the court has jurisdiction of all the claims.

43. His joinder and non-joinder of necessary parties constituted defects of substance under Code pleading, but do not constitute a defect under the FRCP.

44. The Federal rules for diversity jurisdiction are the same in statutory interpleader cases as they are for common law interpleader cases.

45. Under the FRCP all persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or series of transactions and if any question of law or fact common to all these persons will arise in the action.

46. Neither a hybrid class suit nor a spurious class action is permitted as a class action under the FRCP.

47. A default judgment will be set aside if a defendant was merely guilty of ordinary negligence and has a meritorious defense.

48. A declaratory judgment adjudicates the rights of the parties without attaching any coercive or consequential relief and can therefore never be enforced against the parties.
49. Where a judgment is rendered in favor of a plaintiff, the basic rights of the plaintiff are merged into the judgment and cannot thereafter be reasserted because of the principle of merger, but where judgment is rendered in favor of the defendant, the plaintiff cannot thereafter reassert the alleged rights because of the principle of Res Judicata.

50. The FRCP are construed to secure the just, speedy, and inexpensive determination of an action.

II. (A) Place the number of the item in the first column before the item in the second column which is most closely related to it.

1. Common law ___________________ construed to do substantial justice
2. Negative pregnant _______________ equity
3. Pleading under Federal Rules ___________________ auxiliary jurisdiction of equity
4. Anticipatory pleading ___________________ res judicata
5. Discovery at common law _______________ inadequate damages
6. Retraxit ____________________ issue pleading
7. Compromise verdict ___________________ sheriff's jury
8. Default judgment ___________________ valid judgment for plaintiff
9. Merger ____________________ public policy
10. Collateral estoppel _______________ defect of substance under code pleading

(B) Relate each of the following to (a) recoupment, (b) set-off, (c) counterclaim, (d) impleader, or (e) crossclaim by placing the appropriate letter in the space before each item:

(____) Reduction of the amount of claim of plaintiff by consideration of a liquidated debt owed to defendant.

(____) Claim for indemnity by plaintiff against co-plaintiff in response to counterclaim of defendant.

(____) Must arise out of same transaction.

(____) Third party practice.

(____) Permitted irrespective of whether tort or contract, law or equity, or arising out of same transaction or occurrence or not.

(C) Fill in the proper word or words in each blank.

1. The plaintiff must produce more than a _______________ of evidence or a verdict will be _______________ against him.

2. The plaintiff at common law could take a _______________ at any time before the jury retired.

3. The principle that one is not bound by a judgment unless he is a party to the proceeding is not applicable to a _______________ action.
4. ____ and ____ pleading are permitted under the Federal Rules of Civil Procedure.

5. A motion for judgment notwithstanding the verdict by the plaintiff at common law corresponded with a motion ____ by the defendant.

6. If error committed during the course of a trial does not constitute prejudicial error and probably was not prejudicial, then it is _____.

7. A Federal Court can take ____ of the law of the United States or of the law of any State of the United States.

8. Where a question of fact essential to a judgment is actually litigated and determined by a valid and final judgment, the principle that the determination is conclusive between the parties is based on _____.

9. Where plaintiff sued defendant at common law for money lent, defendant pleaded the statute of limitations, and plaintiff in his replication alleged a new promise, and the court sustained a demurrer thereto, the court ruled that the plaintiff was guilty of a _____.

10. If the defendant at common law misunderstood the plaintiff's declaration and filed a pleading which did not respond thereto, the plaintiff could file a ____ in order to get the defendant to file a proper plea.

(D) Indicate whether either party would be entitled to a jury trial in each of the following instances by placing a J (for jury trial) or an NJ (for not a jury trial) in the proper place.

(____) A suit for a declaratory judgment to determine whether a liability insurance policy is applicable to a particular motor vehicle accident.

(____) A suit by a principal against a sub-agent for an accounting for funds alleged to be held by sub-agent and belonging to principal, and for judgment for the amount thereof.

(____) A counterclaim by defendant against plaintiff (who sought damages for trespass to land) to enjoin plaintiff from interfering with defendant's easement to cross plaintiff's land.

(____) The answer of a principal debtor as a third party defendant where creditor sues surety for judgment on a note, neither plaintiff nor defendant having demanded the right to trial by jury.

(____) Claim of a creditor against a bankrupt's estate in a bankruptcy proceeding, where creditor claims on basis of an open account.

(E) 1. List ten grounds for a motion for a new trial.
2. Please write a short evaluation of the course and offer suggestions for improvement of the course.