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FEDERAL JURISDICTION AND PROCEDURE
(Final Examination)

January 11, 1972
Mr. Anderson

I. Place a T or an F before each statement to indicate whether the statement is true or false.

1. The U.S. Constitution establishes the Federal District Courts, the Courts of Appeal for each Circuit and the Supreme Court of the United States.
2. The power of judicial review is delegated to the Supreme Court in the Constitution.
3. Article III of the U.S. Constitution establishes both law and equity courts and provides for trial by jury only in law courts.
4. The power to establish the jurisdiction of the United States Courts is delegated to Congress.
5. Jurisdiction cannot be conferred on the Federal Courts by waiver, estoppel or consent.
6. A United States taxpayer does have sufficient interest as such to establish a case or controversy where the taxpayer alleges that a federal expenditure violates a specific constitutional right of the taxpayer.
7. A declaratory judgment adjudicates the rights of the parties without attaching any coercive or consequential relief and therefore does not present a case or controversy within the meaning of the Constitution.
8. In a suit by the United States to enjoin West Virginia, which had issued a license to a power company to build a dam across a navigable stream, the federal court should dismiss the suit because a case or controversy is not presented in that navigation would be threatened by imminent construction of the dam but not by permission to construct it.
9. The power of federal courts to pass upon the constitutionality of acts of Congress arises only when the interests of the litigants require the use of judicial authority for their protection against actual interference -- a hypothetical threat is not sufficient.
10. The Federal Rules of Civil Procedure provide that the district courts shall have original jurisdiction of all civil actions wherein the matter in controversy exceeds \$10,000, and arises under the Constitution, laws, or treaties of the United States.
11. The ingredients theory established by Chief Justice Marshall in the Osborn case has been expressly overruled and repudiated by the Supreme Court.
12. Where title to land is in doubt because of some matter of federal law, there is federal jurisdiction to entertain a bill to remove a cloud on title, but not a suit to quiet title.
13. If a federal question arises only under the answer of the defendant, it will not be possible for the Supreme Court of the United States to resolve the issue.
14. If federal law creates a right and there is no issue under the law, but merely a question of fact as to whether plaintiff comes within the provisions of the federal law, then federal jurisdiction is not established.
15. Even though a United States statute permitted states to tax shares of a national bank, it was held that there was not federal jurisdiction in a suit to collect the tax.
16. The power of the Supreme Court to review the decisions of the Federal Circuit Courts of Appeals is limited to cases involving questions of federal law.
17. The power of the Supreme Court to review the decisions of the Federal District Courts is limited to cases involving questions of federal law.
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19. The power of the Supreme Court to review the decisions of the Federal District Courts is limited to cases involving questions of federal law.

16. If a plaintiff asserts a claim that he bases on the federal constitution, jurisdiction is absent if the court concludes that the claim is clearly erroneous.
17. The Federal Courts have exclusive jurisdiction of all cases arising under the patent laws, but not of all questions in which a patent may be the subject-matter of the controversy.
18. Where a plaintiff alleges a claim arising under federal law as well as a claim arising under state law, a federal court has pendent jurisdiction of the claim arising under state law.
19. If the federal courts have exclusive jurisdiction of a certain suit, but the suit is brought in a state court, the suit cannot be removed to the federal court.
20. The declaratory judgments procedure provides a means whereby a person who has a defense arising under federal law can commence a proceeding in a federal court and allege a claim arising under the laws of the United States, thus providing federal jurisdiction.
21. Technically speaking there is no federal common law, but it is not uncommon for federal courts to fashion federal law where federal rights are concerned.
22. For purposes of diversity of citizenship a corporation is a citizen of only those states in which it is incorporated.
23. All citizens of each of the fifty states are citizens of the United States, but not all citizens of the United States are citizens of the individual fifty states.
24. Any citizen of the United States who is a resident of a state is automatically a citizen of that state.
25. The requirement that there must be complete diversity of citizenship in order to have federal jurisdiction was established by statute.
26. United States Steel Company can take advantage of diversity jurisdiction but United Steel Workers of America, AFL-CIO cannot.
27. The citizenship of the real party in interest is the basis for determining jurisdiction based on diversity of citizenship.
28. A representative party, with at least a modicum of control of the litigation is a real party and not merely nominal.
29. A trustee with active powers of management is a real party in a representative capacity, but a mere agent for collection is not.
30. In a stockholders derivative suit, the citizenship of the plaintiff stockholder and the citizenship of the defendant corporate officials is determinative of jurisdiction, and the citizenship of the corporation is immaterial.
31. The requisite amount is not in controversy where it can be seen at the commencement of the case that to a legal certainty the plaintiff cannot recover that much.
32. A federal court must try a personal injury case on the merits in order to determine whether the requisite jurisdictional amount is present.
33. If either the pecuniary value of the plaintiff's claim or the value of the property at issue to the defendant exceeds \$10,000, then the jurisdictional amount required is satisfied.
34. Where a defendant removes a case from a state court to a federal court, the determinative jurisdictional amount is the possible loss to the defendant rather than the alleged damages of the plaintiff.

35. The future operation of a judgment by way of collateral estoppel does not establish the determinative jurisdictional amount.
36. Since alimony is subject to modification by the court in the future or to be cut off in the event of the death of the husband, the requisite jurisdictional amount can never be established in such cases.
37. When two or more plaintiffs having separate and distinct demands unite in a single suit, it is essential that the demand of each be of the requisite jurisdictional amount; but when several plaintiffs unite to enforce a single title or right in which they have a common and undivided interest, it is enough if their interests collectively equal the jurisdictional amount.
38. It is settled law that a plaintiff may aggregate his claims against an opposing party and thereby satisfy the monetary requirement for federal jurisdiction.
39. A citizen of the state in which a state court action is pending is prohibited from removing the case to a federal court on the grounds of diversity of citizenship but is not prohibited from removing on the ground of federal question jurisdiction.
40. The procedure for the removal of a case from a state court to a federal court which is set forth in the Federal Rules of Civil Procedure is strictly construed.
41. A labor union for purposes of federal venue is considered a resident of the same state or states as its members.
42. The Federal Rules of Civil Procedure require that a plaintiff allege a cause of action for relief before the court can take cognizance of the matter.
43. Demurrers, pleas, and exceptions for insufficiency of a pleading cannot be used under the Federal Rules of Civil Procedure.
44. The Federal Rules of Civil Procedure adopt the fact theory of pleading.
45. Counterclaims are either compulsory or permissive depending upon whether it arises out of the same transaction or occurrence of the subject matter of the opposing party's claim, but third-party practice is compulsory.
46. Whenever the claim or defense asserted in an amended pleading arose out of the conduct, transaction, or occurrence set forth in the original pleading, the amendment relates back to the date of the original pleading.
47. The provisions of the Federal Rules of Civil Procedure for voluntary dismissal codify the common law rules of nonsuit.
48. The jurisdiction of federal courts and the venue of actions brought in the federal courts are not affected by the Federal Rules of Civil Procedure.
49. A civil action is commenced under the Federal Rules of Civil Procedure only when proper service of process is made on the defendant irrespective of the return of the serving officer.
50. Since the Federal Rules of Civil Procedure do not specifically provide for service of process by tacking the notice on the front door of the defendant, it is not possible for a federal court to obtain jurisdiction of a defendant by such method of service of process.

II. A claim is made by a citizen of Virginia against a citizen of North Carolina for \$25,000.00. The North Carolina citizen refuses to pay whereupon the Virginia citizen assigns his claim to a citizen of North Carolina in order to defeat possible federal jurisdiction. Which of the following counter-moves by the defendant is most likely to be effective? In one sentence give the reason for your choice.

- (a) A defense in the North Carolina state court when sued by the assignee.
- (b) A suit by the defendant against the assignee in the North Carolina state court to enjoin him for asserting the claim.
- (c) Suit by the defendant against the original claimant in a Virginia federal court for a declaratory judgment establishing his defense.

In two sentences give the reason for not choosing the other moves.

III. In outline form set forth the procedure for removal of an action from a state court to a federal court by the defendant.

IV. (Fill in the blanks.)

- (a) A civil action wherein jurisdiction is founded only on diversity of citizenship may, except as otherwise provided by law, be brought only in the judicial district where all _____ or all _____ reside, or in which _____.
- (b) A civil action wherein jurisdiction is not founded solely on diversity of citizenship may be brought only in the judicial district where all _____ reside, or in which _____.
- (c) A corporation may be sued in any judicial district in which it is _____ or _____ to do business or is doing business, and such judicial district shall be regarded as the _____ of such corporation for _____ purposes.
- (d) An _____ may be sued in any district.

V. A court of the United States may not grant an injunction to stay proceedings in a State court except:

- (a)
- (b)
- (c)

VI. The Rules of Decision Act provides, "The laws of the several states, except where the Constitution or treaties of the United States or Acts of Congress otherwise require or provide, shall be regarded as rules of decision in civil actions in the courts of the United States, in cases where they apply."

State the relation of each of the following to the Rules of Decision Act:

- (a) Swift v. Tyson.
- (b) Erie v. Tompkins.
- (c) Guaranty Trust Co. case.
- (d) Hanna v. Plumer.
- (e) Sec. 1404(a) of the Judicial Code.