Civil Procedure: Final Examination (1973)

William & Mary Law School
1. The Express Company, not a resident of Connecticut, was selling its travellers checks there through the U. S. Bank in Hartford. To obtain jurisdiction over The Express Company, the plaintiff’s attorney had a friend purchase $620 worth of checks at the Bank with money supplied by the attorney and endorse and deposit the checks to the attorney’s credit in another bank. Pursuant to a prearranged plan, the debt of $620 running from the U. S. Bank to the defendant created by the purchase was then "attached." Was this a proper means of obtaining jurisdiction? Discuss.

2. Section B, Chapter I, of the Casebook provides a basic outline of the procedure in a civil action. Roughly reproduce this outline.

3. X, an alien, wishes to sue Y, another alien for $25,000.00 in a federal district court. (a) If no federal question is involved, does that court have jurisdiction? (b) Does it have jurisdiction where a federal question is involved? Give reasons.

4. Two persons who are citizens of different states each claim to be entitled to the proceeds of a certain life insurance policy amounting to $600. Can the insurance company interplead the two claimants in a federal court? Discuss.

5. Does the Federal Court have jurisdiction in the following situations and why?

   (a) One plaintiff suing one defendant claiming $3000 property damage and $9000 personal injury resulting from an automobile accident.

   (b) Two plaintiffs, each with a claim for $7,000 arising out of one accident, suing one defendant.

   (c) One plaintiff suing two defendants seeking $7000 from each defendant.

   (d) One plaintiff suing one defendant for $8000, defendant asserting a compulsory counterclaim for $6000.

   (e) Insurance company seeking a declaratory judgment that it is liable on an insurance policy to two beneficiaries in the amount of $6000 to each beneficiary.

   (f) Two plaintiffs suing a single defendant; one plaintiff has a claim for $5000 and the other has a separate and distinct claim for $5000 that will involve many of the same items of proof.

   (g) Plaintiff brings suit for $2000 in a state court; defendant asserts a counterclaim for $50,000 and seeks to remove the entire action to the federal court.

6. How does the court determine if the jurisdictional amount requirement has been satisfied where the object of the plaintiff’s action is something other than the recovery of damages, such as the abatement of a nuisance or an injunction against the enforcement of a statute on the ground that it was unconstitutional?
7. Appellant's land was taken by condemnation by the City of Hutchinson, Kansas. Notice of the proceedings was given by publication in the official city paper of Hutchinson. After the time for appealing the condemnation report had run, Walker commenced an equitable proceeding in a Kansas state court alleging that he had never been actually notified of the condemnation proceeding and that the procedure employed was invalid. Is his contention correct? Use these facts as a vehicle for a short general discussion of this topic.

8. (a) Generally, a complaint will be sufficient under modern practice if it would have been a good declaration at common law. True or False?

(b) What were the Hillary Rules?

(c) Is the use of different counts to state a single cause of action permitted under the codes?

(d) Is the use of the "common counts" permitted under the codes?

(e) What changes were made by the codes in bringing a tort action?

(f) What is meant by allowing a defendant to plead equitable defenses at law?

(g) What is the code substitute for the special demurrer?

(h) If A in Indiana sues upon a cause of action based upon the common law of Indiana, what must he allege?

9. An agency of the U. S. sued X in a civil action. X contended that the act creating the agency was unconstitutional, and the federal district court so held. May the agency appeal and, if so, where?

10. May a court of the U. S. grant an injunction to stay proceedings in a state court? Discuss.

11. (a) May jurisdiction be waived?

(b) May venue be waived?

(c) What is the key to venue?

(d) How is venue different in local actions and transitory actions?

(e) Where jurisdiction is based solely on diversity, the action may be brought in what districts? Where it is not founded solely on diversity?

(f) Venue that is proper for a federal ground will support adjudication of an ancillary non-federal ground. True or False?

(g) Venue principles also apply to counterclaims, cross-claims, third-party claims, and intervenor: True or False?

(h) A party may not waive venue by laches. True or False?

(i) P of Virginia wishes to sue D of Ohio on a note for $9,999.99 plus $200.00 interest in West Virginia. Where is the proper venue for this case?

(j) P of New York wishes to sue an alien who resides in Vermont. He "catches" him while passing through Ohio. Which of these is the proper venue?

(k) A corporation was incorporated in State A, duly licensed to do business in State B, and was "present without leave" in State C. What is its residence for venue purposes?

(l) Discuss briefly the subject "Change of Venue" as it relates to both State and Federal Courts.
(m) A of Virginia sues B of North Carolina and C of Virginia in the State courts of Virginia for $25,000 due on their joint federal bank note. B removes the case to the Federal court. Discuss.


13. May the following be removed?
   (a) Actions by injured employees of railway companies under the F.E.L.A.
   (b) Actions under the Jones Act.
   (c) Actions under the Fair Labor Standards Act.
   (d) Actions under Workmen's Compensation Acts.

14. (a) To what court and within what time should a defendant apply for removal?
   (b) What may the Federal court do after removal has been effected?

   (a) What principle does the choice of law in this context represent?
   (b) Does the "Erie Rule" establish a rule of constitutional limitation for decision as to what Congress can constitutionally do?
   (c) Is the "Erie Rule" also found in the Judicial Code and, if so, in what manner is it expressed?
   (d) Discuss briefly the "outcome determinative" test and "ERIE."
   (e) How does the Federal Court determine "state law?" May it consider obiter dicta, analogous decisions, and what does it do where there are inconsistent state cases?
   (f) How may the Federal Court be penalized or sanctioned for not following state law?

16. Critically evaluate the following complaint:

DISTRICT COURT OF THE UNITED STATES
FOR THE EASTERN DISTRICT OF VIRGINIA
Civil Action, File No. 6

A. B. Plaintiff
v.
C. D. and E. F. Defendants

1. Plaintiff is a citizen of the State of Ohio and Defendants are citizens of the State of Virginia. The matter in controversy exceeds the sum of ten thousand dollars with interest.

2. On June 1, 1958, at 10:00 a.m. in a public highway called Broad Street in Richmond, Defendant C. D. or Defendant E. F., or both willfully or recklessly or negligently drove or caused to be driven a motor vehicle against Plaintiff who was then crossing said highway at night.

3. As a result Plaintiff was thrown down and his leg broken and was otherwise injured, was prevented from transacting business, suffered great pain of body and mind, and incurred expenses for medical attention and hospitalization in the sum of one thousand dollars. Therefore Plaintiff demands judgment against C. D. or against E. F. or against both in the sum of ten thousand dollars and costs.

Signed: John Marshall
Attorney for Plaintiff
1 Old P. O. Bldg.
Williamsburg, Va.
17. X of New York wishes to compel Y of Virginia to convey Blackacre to him as he has promised by valid contract. If X proceeds in the Federal courts should he file a bill in equity for specific performance?

18. X sued Y for $200.00. When the trial got under way Y demanded a jury. Is he entitled thereto?

19. Rovinsky worked in Florida for 14 years. Subsequently he moved throughout the U.S. for the Department of Commerce. Rowe brought suit against Rovinsky in a Michigan state court, service of process being affected under the state's non-resident motorist statute. Rovinsky moved to dismiss on the ground that he was a resident of Michigan, and hence not amenable to service under the statute. After the action was dismissed Rowe commenced a diversity action against Rovinsky in a federal court. Service of process was made under FRCP 4(d)(1), by leaving a copy of the summons and complaint with Rovinsky's mother at the address he had given as his residence in an affidavit supporting the earlier motion to dismiss. Rovinsky attacked this service, showing that "his dwelling place and usual place of abode" for the past two years were Minnesota—that he had returned to his mother's house only to visit, even though he considered it his "legal residence." Was the second process good or bad? (a) Discuss briefly your reasons. (b) What kind of service is this called?

20. X removed himself from a domicile with the intention of not returning. X's family remained behind temporarily. W was served by newspaper as provided under the publication statute. Was this mode of service proper in this case?

21. X was injured by a vehicle owned by Y and Z, non-residents, while operated by Y. In accordance with State A's non-resident motorist statute, X served Y and Z by mailing the federal district court summons and complaint to State's Secretary of State and mailing to Z and Y at their last known address. Discuss.

22. X, of State A, commenced in a federal district court in State B, a personal injury action resulting from an accident in State C allegedly caused by negligence of Y, citizen of B. Service was made upon Y's wife at his residence (Y was deceased at the time the suit was filed). B required delivery of summons by hand; the federal court did not. Does FREP 4(d)(1) apply or the state rule?

23. With reference to Mason v. American Emery Wheel Works, what was the basis for Judge Hagruder's (U.S. Court of Appeals - 1st Circuit) statement that "since the injury was inflicted in Mississippi the district court no doubt deemed itself to be obliged to apply the Mississippi local law" (the action was brought in Rhode Island). How can this be reconciled with ERIE? Is there any persuasive argument for the conclusion that the question of which state's law should be applied by a federal court in a diversity action, when the transaction or event that is the subject of the lawsuit had contacts with one or more states other than the forum state, is to be resolved according to a federal rule?

24. The respondent demurred to petitioner's complaint in an action brought in a Georgia state court under the FELA. The theory of the demurrer was that the complaint failed "to set forth a cause of action and is otherwise insufficient in law." The Georgia courts sustained the demurrer on the basis of the Georgia practice rule requiring pleading allegations to be construed "most strongly against the pleader." Were the Georgia courts correct?

25. Briefly discuss (a) "Immunity from Process," a topic treated in the Casebook and (b) Forum Non Conveniens and Transfer of Venue.

26. Give the full names of the authors of the Casebook.
27. Discuss the "Theory Of The Pleading" (or the "Theory Of The Case") Doctrine. Does it seem to be gaining in acceptance? As to "fraud" actions with necessary elements of a cause of action in "conversion?"

28. Discuss briefly "Equity" and availability of equitable relief under modern practice.

29. Briefly discuss Modern Pleading, i.e., (a) Detail Required under the Codes (b) Detail Required under the Federal Rules (c) The Continuing Debate on the Role of Pleadings—Proposals to Obviate Deficiencies (d) Alternative and Inconsistent Allegations (e) Provisions to Ensure Truthful Allegations.

30. Discuss and define (elements, procedure, remedy, etc.):
   (a) Detinue
   (b) Replevin
   (c) Trover
   (d) Trespass
   (e) Case
   (f) Covenant
   (g) Debt
   (h) Assumpsit
   (i) Ejectment

31. What is a writ (description and purposes)? What constituted common law pleadings and what were their purpose? (Go up to Surrebutter.)

BONUS QUESTION

D manufactured a safety valve in Ohio for use on water heaters. D sold a valve to X in Pennsylvania and X incorporated the valve in its water heater in Pennsylvania. X then sold the completed heater to a dealer in Illinois where the valve exploded and injured P in Illinois. The Illinois statute provided for personal service outside of Illinois on one who "commits a tortious act within this state" and that such service constitutes personal service. Service of summons was made on D in Ohio. D appeared specially seeking to quash the service which motion to quash was granted in the trial court. Did the trial court err? Explain.