

1970

Civil Procedure II: Final Examination (May 18, 1970)

William & Mary Law School

Repository Citation

William & Mary Law School, "Civil Procedure II: Final Examination (May 18, 1970)" (1970). *Faculty Exams: 1944-1973*. 212.
<https://scholarship.law.wm.edu/exams/212>

CIVIL PROCEDURE II
Final Examination

May 18, 1970

1. P brought an action against D and in his initial pleading alleged that D's ten year old son was walking down the street with D's dog Fido when P was riding by them on his bicycle, that the son threw a snowball at P whereupon Fido immediately ran after P and bit P's leg which caused P to fall from the bicycle and break his leg. P prayed for \$50,000.00 in damages. What reply or pleading would D file (a) at common law (b) under code pleading, and (c) under the Federal Rules of Civil Procedure? What would the court do in each instance? Give reasons for your conclusions.
2. P and D, the operators of two motor vehicles, were involved in a head-on collision on January 1, 1965, and both of them were killed instantly. P's personal representative commenced an action under the Death by Wrongful Act Statute on December 30, 1966, and process was served on D's personal representative on January 2, 1967. On January 10, 1967, D's personal representative filed a responsive pleading in which he denied each and every allegation of liability, but failed to affirmatively plead the statute of limitations, and filed a counterclaim for damages under the Death by Wrongful Act Statute on behalf of D against P. P's personal representative failed to file a response to the counterclaim. At the pre-trial conference both parties moved for summary judgment. How should the court rule? Why?
3. P brought an action in a Federal District Court against D in which P sought to recover damages from D for alleged negligent operation of an automobile. P claimed that he received permanent injuries to his right leg and would always have difficulty walking. While the case was pending, D heard rumors that (a) P had consulted Dr. X who had examined P and concluded that P's injuries were temporary and minor, and (b) W had taken motion pictures of P engaging in a foot race six months after the accident. Assuming the Dr. X refuses to give D any information because of the doctor-patient relationship, and W refuses to discuss the film or the foot race because P is his friend, what can D do? Explain the procedure which D would use.
4. P, a student, enrolled in a certain course in philosophy taught by Professor D. Throughout the course D and P engaged in many heated discussions involving the merits and lack of merits of various theories. Finally Professor D stated in class that he had had enough of P's nonsense and that he was going to drop P from his class whereupon P stated, "Professor D, you are completely incompetent, you are dishonest, and you have served time in prison for burglary." After class P retained Blackstone to represent him and told Blackstone that P could prove the truth of every statement he made concerning Professor D. Blackstone brought a suit on behalf of P against D in which Blackstone sought to enjoin P from dropping P from the class and to prevent D from bringing an action for slander against P. D filed a counterclaim in which he sought damages for slander. Discuss the right to trial by jury in relation to this proceeding, pointing out the extent if any to which the right would be applicable, and the procedure by which it can be obtained.
5. Discuss the motion for judgment notwithstanding the verdict in relation to the right to trial by jury, pointing out the effect of the motion in classical procedure, the practice that developed in State courts in the United States, the case of Slocum v. New York Life Insurance Co., and how the result was circumvented in the federal courts, and finally the substance of the Federal Rules of Civil Procedure concerning the motion.

6. After a heated and tiring trial of a personal injury case in which the jury returned a verdict for the defendant, the plaintiff's attorney was walking slowly toward his car, when one of the jurors stopped him and explained that he had to join in the verdict for the defendant because the evidence showed that the plaintiff was not wearing a seat belt at the time of the collision. The juror stated that one of the other jurors stated that he was in favor of a defendant's verdict because the plaintiff should have been at home with his family at the time of the accident instead of out riding. Still another juror kept flipping a coin during the deliberation and on each vote favored the defendant. Another juror stated that he was familiar with the place of the accident and it was not at all like the plaintiff described in his testimony. Before the plaintiff's attorney said good-bye to the juror, the defendant's attorney and another juror got into the defendant's car and rode off. Discuss the significance of each of these matters on a motion for a new trial.
7. Creditor made a loan of Fifteen Thousand Dollars jointly to Debtor (1) and Debtor (2) which debt was to be paid one year from date together with interest at the rate of six per centum per annum. When the debt matured Debtor (1) was a citizen and resident of the State of Virginia and Debtor (2) was a citizen and resident of the State of North Carolina. Creditor was a citizen and resident of the State of North Carolina. When Creditor demanded payment, Debtor (1) claimed that Debtor (2) was supposed to pay the entire debt and Debtor (2) claimed that Debtor (1) was supposed to pay the entire debt. What should Creditor do? Explain the procedure which he would follow.
8. P brought an action against D for \$1000 on a debt that D owed to P. D filed an answer in which he admitted the debt but alleged that subsequently P and D agreed that in consideration of their respective promises that D would pay \$1500 and P would pay \$1000 to the student that made the highest grade in Civil Procedure. At the trial P testified that he did not make any such agreement, but the jury believed D's testimony and returned a verdict for D, and judgment was accordingly rendered. Student, who had heard of the alleged agreement studied unusually hard in order to earn the \$2500 and made the highest grade. Student therefore brought an action against P and D on the alleged contract seeking \$1500 from D and \$1000 from P. Student filed a certified copy of the judgment in the action of P against D and then moved for summary judgment. Result? Why?
9. T brought an action against A and P in which T alleged that A while an agent in the course of his employment for P was negligent which was the proximate cause of injuries to T. The jury returned a verdict in favor of T against P for \$5000 and a verdict in favor of A. (a) What should T's attorney do? (b) What should A's attorney do? (c) What should P's attorney do? (d) What would the court do?