

College of William & Mary Law School
William & Mary Law School Scholarship Repository

Faculty Exams: 1944-1973

Faculty and Deans

1973

Civil Procedure I: Final Examination (January 4, 1973)

William & Mary Law School

Repository Citation

William & Mary Law School, "Civil Procedure I: Final Examination (January 4, 1973)" (1973). *Faculty Exams: 1944-1973*. 334.
<https://scholarship.law.wm.edu/exams/334>

Copyright c 1973 by the authors. This article is brought to you by the William & Mary Law School Scholarship Repository.
<https://scholarship.law.wm.edu/exams>

CIVIL PROCEDURE I

Final Examination

January 4, 1973

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

- ___ 1. Although a large part of law practice consists of advising clients and drafting legal documents, such advice is given and drafting done in the light of what may be expected to happen in court in relation hereto.
- ___ 2. Procedure is of importance to law students because, knowledge of how to get into court and what to do there is essential to a lawyer, procedure effects substantive law, only the ratio decidendi is binding precedent and knowledge of how the case came before the court is essential to determine the ratio decidendi, and finally it is the responsibility of the legal profession to maintain the machinery of justice.
- ___ 3. Separation of procedure from substantive law is a natural distinction which is accomplished by the courts without resort to legal tests.
- ___ 4. The organization of the courts in the United States and in each state is established and regulated by the Constitution of the United States and of each state.
- ___ 5. Jurisdiction of the federal courts depends upon the character of the controversy or upon the character of the parties to the controversy.
- ___ 6. All of the following constitute proper and present day terminology: circuit court of appeals, senior circuit judge, senior district judge, and justice instead of judge in reference to a member of the Supreme Court of the United States.
- ___ 7. In some states a civil action is commenced by the issuance of a summons and service of process upon the defendant, but in the federal courts the action is commenced by filing a complaint.
- ___ 8. At common law a plaintiff obtained an original writ from the office of the Chancellor, and not a judicial writ, in order to commence a law action.
- ___ 9. Useful as pleadings are, they do not always subserve the purposes of justice.
- ___ 10. A fundamental rule of pleading at common law is that all material facts alleged by one party and not denied by the other party are to be taken as admitted.
- ___ 11. Modern procedure is based on the realization that isolation of a single issue of fact or law is frequently unrealistic, and that there may be many issues of both law and fact in a single case.
- ___ 12. Where pleadings terminate in a demurrer, the issue of law thus raised is set down for hearing before the court and jury.
- ___ 13. Discovery is designed to augment pleadings, reduce the chance of surprise in litigation, and to emphasize the trial as a search for truth rather than a sporting contest.
- ___ 14. Where pleadings terminate in a denial, the issue of fact thus raised will be set down for trial by jury.
- ___ 15. At early common law a judgment creditor could not reach defendant's land, but by the Statute of Westminster II in 1285 it was provided that a plaintiff at the option of the sheriff could seize one half of defendant's lands.
- ___ 16. The record of a case on appeal consists of the printing of the papers in the case in the trial court, but not in the chronological order in which they occurred.

- ___ 17. The Nisi Prius system brought the administration of justice in England to the localities, but at the same time the courts of record sat in banc in London.
- ___ 18. The rigidity of the common law frequently produced injustice, and to prevent this injustice equity came into being.
- ___ 19. Original writs deferred from each other in their tenor according to the nature of the plaintiff's complaint and the defendant's plea.
- ___ 20. The Anglo-American system of law is what it is today because of the foresight and planning of our forefathers.
- ___ 21. Where an injury is due to the immediate act of the defendant's negligence, the plaintiff has an election to treat the negligence as the cause of action and sue in case, or to consider the act itself as the case and sue in trespass.
- ___ 22. The famous Squibb Case in which Blackstone established his great reputation, established a clear test to determine when trespass should be brought and when case should be brought.
- ___ 23. An action of ejectment will lie against a defendant irrespective of possession of land if the defendant asserts a bona fide claim to ownership of the land.
- ___ 24. Replevin originally would lie only against one accused of having wrongfully distrained chattels of the complaining party but subsequently it was broadened to cover any wrongful possession.
- ___ 25. Ejectment has been developed as simple, easy and inexpensive method of determining ownership of real property.
- ___ 26. Federal common law consists of the English common law as of 1789 in so far as it was suitable to the needs of the United States.
- ___ 27. As a result of the differences in the historic development of proceedings at law and proceedings in equity, and the different modes of trial, the rules at to production of evidence were different.
- ___ 28. In equity either a seller or a buyer is entitled to specific performance of a written binding contract to sell land since all land is considered unique.
- ___ 29. There are situations where the remedy at law for breach of contract is not adequate although the property involved is not unique.
- ___ 30. Specific enforcement in equity will not be ordered if the performance to be compelled is contrary to the policy of the political party in office.
- ___ 31. A plaintiff cannot obtain specific performance in equity if the defendant could not have obtained specific performance against the plaintiff.
- ___ 32. Equity has no power to grant relief against a tort since the plaintiff can always recover damages in a law action.
- ___ 33. Two different techniques were used to reform common law procedure, the New York method which involved elimination of the distinction between law and equity, and the English method which provided reform without unifying law and equity.
- ___ 34. The problem behind the theory of the pleadings doctrine caused many difficulties in New York, but is of no concern whatsoever under the Federal Rules of Civil Procedure.
- ___ 35. Where a judgment on the merits is rendered in favor of a defendant in an action to enforce one of two alternative remedies, the plaintiff can thereafter maintain an action on one of the alternative remedies but not both.

- ___ 36. A corporation is a citizen for purposes of diversity of citizenship, but is not a citizen insofar as the "Due Process" clause of the Fourteenth Amendment is concerned.
- ___ 37. The Constitution as proposed and ratified in 1789 specifically provided that all persons born in the United States and subject to the jurisdiction thereof are citizens of the United States and of the state wherein they reside.
- ___ 38. If a plaintiff alleges an anticipated defense of the defendant which involves the interpretation of a federal question, then the plaintiff has alleged sufficient grounds for federal jurisdiction.
- ___ 39. Any civil action of which the federal district courts have original jurisdiction can be removed by the defendants from the state court in which it is brought to the nearest federal court.
- ___ 40. Congress expressly provided that the Federal Rules of Civil Procedure could not modify any substantive right and must preserve the right of trial by jury.
- ___ 41. The Rules of Decisions Act expressly provided that only the statutes of the several states were binding on the federal courts in cases in which they were applicable.
- ___ 42. In the case of Erie Railroad Co. v. Tompkins, Mr. Justice Brandeis rendering the opinion for the court held that the Rules of Decision Act was unconstitutional.
- ___ 43. The "outcome determination test" established in Guaranty Trust Co. case does not constitute an automatic criterion, but is applied in the light of policies underlying the Erie doctrine.
- ___ 44. The codification of the doctrine of forum non conveniens by Congress has required the various state courts to apply the doctrine in FELA cases.
- ___ 45. All actions can be classified as either transitory or local in nature.
- ___ 46. No state can exercise jurisdiction and authority over persons or property outside of its geographical boundaries.
- ___ 47. A state court can acquire jurisdiction over any citizen of that state even though he does not maintain a place of abode in that state because extension of citizenship to a person constitutes a reasonable relation between the defendant and the state of the forum.
- ___ 48. A defendant cannot make a special appearance under the federal Rules of Civil Procedure, but a defendant can assert a defense formerly made under a special appearance in accordance with the provisions of Rule 12.
- ___ 49. Diversity jurisdiction of the federal courts does not extend to in rem or quasi in rem proceedings.
- ___ 50. Service by posting a process on the front door of the usual place of abode of a defendant is not authorized under the federal rules and can therefore never be used as a means of gaining in personal jurisdiction over a defendant in a federal court.

II. 1. Under what circumstances is an exception to Pennover v. Neff made?

2. List the instances which have been held to be exceptions to Pennoyer v. Neff?

3. How is the process usually served on a nonresident in these instances?

III. List each of the following items in the appropriate column in the order in which it would ordinarily occur in classical procedure: Summons, subpoena, verdict, disclaimer, Bill, Plea of traverse, Prayer for relief, Answer, Declaration, demurrer, Judgment, Decree, trial, depositions, Reference to Commissioner, Appeal, writ of error, instructions, writ of execution, contempt proceedings.

LAW

EQUITY

IV. List the various cases in chronological order that have involved interpretation of the Rules of Decisions Act and state briefly the interpretation made in each case.

V. Explain each of the following:

(A) Defenses that can be made on special appearance in quasi in rem proceeding.

(B) Situs of a chose in action for purposes of jurisdiction.

VI. (A) What is the difference between a contract implied in fact and a contract implied in law?

(B) What remedies were available in classical procedure to a plaintiff for breach of a contract implied in law?