

**Civil Procedure (Greabe)  
Final Examination (Fall 2009)**

**DIRECTIONS -- IT IS VERY IMPORTANT THAT YOU READ THESE DIRECTIONS CAREFULLY AND UNDERSTAND THEM FULLY!**

These questions are "open book." You may use any of the course materials (including materials posted on the course website), handouts, and notes you have taken in class in preparing your answers to the following questions. You also may use any hornbooks, treatises, or commercial outlines. The only limitations are that you refrain from any electronic research (such as using Westlaw or the web) and that you work independently. Under no circumstances should you speak with, or look at the materials of, a fellow classmate concerning this exam.

Your student identification number, as well as the name of the course and the date of the exam, should be placed at the top of the first page of your submission. **DO NOT PUT YOUR NAME, OR OTHERWISE SUGGEST TO ME WHO YOU ARE, ANYWHERE IN YOUR SUBMISSION.** Your answer must be **TYPED** and **DOUBLE-SPACED** and **CONFORM STRICTLY TO SPECIFIED WORD LIMITS.** Any adjustment to your final grade for class participation will be made after I complete the grading of your examination answers.

If you wish to cite to a case, you may use any coherent short-citation form.

**GOOD LUCK AND HAVE A GREAT BREAK!**

**I. (50 Points)**

Respond to each of the questions below **IN A MAXIMUM OF TWO SENTENCES.**

*Example*

Question: Alice, a Vermont citizen, has brought a tort claim for \$100,000 in damages against Bernice, a New Hampshire citizen, in New Hampshire state court. May Bernice remove the case to federal court? Why or why not?

Answer: No. Under 28 U.S.C. § 1441(b), a case in which there otherwise would be diversity jurisdiction is not removable if one of the defendants is a citizen of the state in which the action is brought.

1. Arnold sues Bob for slander. Bob knows that the slanderous statement was actually made by Charles. May Bob implead Charles under Rule 14? Why or why not?

2. Arnold, riding on Bob's Bus Co., is injured when the bus on which he is riding collides with a truck. Arnold sues Bob's; Bob's wins the suit by proving that the truck was entirely at fault. Subsequently, Charles, who also was riding on the bus, sues Bob's for injuries incurred in the same accident. Will Bob's be permitted to take advantage of

the finding of non-liability in Arnold's suit? Why or why not?

3. After *Burnham v. Superior Court*, have we clearly returned to the *Pennoyer* regime in which Due Process Clause of the Fourteenth Amendment always permits a state court to exercise personal jurisdiction over a defendant if she is served with process while voluntarily present in the forum state? Why or why not?

4. Are the holding in *Owen Equipment v. Kroger* and the supplemental jurisdiction regime Congress subsequently created in enacting 28 U.S.C. § 1367 consistent? Why or why not?

5. Must a federal court defendant with a compulsory counterclaim against the plaintiff worry about whether there is an independent basis for subject matter jurisdiction over the counterclaim? Why or why not?

6. Does Rule 13(g), which permits a defendant to bring a transactionally related cross-claim against a co-defendant, limit Rule 18(a)'s unqualified language permitting a party to bring "as many claims as it has against an opposing party"? Why or why not?

7. Plaintiff brings a diversity claim against defendant in federal court. After filing suit, plaintiff wants to join a second defendant on a related state-law claim that does not carry any independent federal subject matter jurisdiction. May she? Why or why not?

8. Must federal courts honor state court judgments? Why or why not?

9. Could Congress authorize original federal jurisdiction over a claim by Arnold, from Vermont, against Bob, from Vermont, Charles from Vermont, and Denise from New Hampshire in which \$750 is in controversy? Why or why not?

10. Could Congress authorize the removal to federal court of any tort claim in which (i) the parties disagree over which state's substantive law should apply to the facts of the case, and (ii) one of parties plausibly argues that it would violate the United States Constitution to apply the law of the state for which his opponent is arguing? Why or why not?

## II. (50 Points)

Suppose that a group of foreign lawyers will soon visit Pierce Law and has asked for an introduction to the U.S. legal system. The Dean has taken responsibility for an overview, and various classes have been tasked with making short presentations. Our class has been chosen to present on the civil litigation system with a focus on federal litigation. After some discussion, we as a class have concluded that a good way to proceed with this assignment would be to select two cases that we have read this semester and explain how they exemplify central ideas or values of federal civil litigation. In an essay not to exceed 200 words, please tell me the two cases you would choose to present and explain (1) how they illuminate important concepts, practices or trends in civil procedure; and (2) what you hope the visitors would take away from our presentation.

### III. (50 Points)

Arnold, a second-year student at Pierce Law who lived all his life in Los Angeles, CA, prior to his August 2008 move to New Hampshire, purchased a 200 year old farmhouse in Canterbury, NH, the summer before he enrolled. Arnold's mother, Beatrice, a California domiciliary, cosigned the mortgage documents and agreed to guarantee the loan. Arnold secured the loan from Jersey Mutual, a Delaware corporation with its headquarters and principal place of business in New Jersey. Jersey Mutual, a subsidiary of Dreyfus (the large mutual fund house) advertises in the broadcast media, print media, and on its website that it can offer low rates because of its efficient and centralized New Jersey operations. Arnold applied for the mortgage on-line, filled it out on-line, and received a telephone call in Los Angeles telling him that his application had been approved so long as his mother agreed to serve as guarantor. Arnold and his mother signed all of the loan documents and closed the loan in Los Angeles in July 2008.

Before closing on the house, Arnold hired an inspector who works from his home in Concord, NH, to inspect the property. The inspector provided Arnold with a report concluding that the home was structurally sound. Soon after closing the loan and moving in, however, a large crack opened in the wall of Arnold's dining room. Arnold summoned a contractor who told him that the foundation was collapsing and had been in the process of collapsing for some time. Immediate repairs costing \$30,000 were necessary. Arnold made the repairs in September 2008. By November 2008, however, this unexpected expense had left Arnold incapable of making his monthly mortgage payments. Arnold failed to make any monthly mortgage payments after November 2008.

In early March 2009, Arnold came to realize that, at the July 2008 closing, Jersey Mutual had failed to provide him and his mother with certain disclosures required by the Federal Truth in Lending Act (TILA). Immediately, Arnold brought suit on behalf of himself and his mother for \$2500 in statutory penalties in the United States District Court for the District of New Hampshire. Within two weeks, Jersey Mutual (which had been successfully sued a number of times for similar TILA violations around the country) offered to settle the case for \$500. Arnold and his mother accepted the offer. Arnold wrote up a settlement agreement stating that Jersey Mutual had violated TILA in a minor way, and sent it to Jersey Mutual's lawyer, who signed it on behalf of Jersey Mutual. Arnold and his mother then signed the agreement and submitted it to the court in support

of their request for voluntary dismissal of the action. The court dismissed the case with prejudice by means of a consent judgment that incorporated the terms of the settlement agreement.

In April 2009, Jersey Mutual filed a diversity action against Arnold's mother in a New Jersey federal court. The suit was filed well within the applicable statute of limitations. The lawsuit sought \$72,500 in unpaid mortgage debt, prejudgment interest in the amount of \$3500, and attorney's fees. Arnold's mother retains the California law firm at which you are a newly hired associate.

**A.** *A partner comes to you and asks whether there any defenses to the lawsuit that might be raised under Rules 12(b)(1) or 12(b)(2). IN NO MORE THAN 150 WORDS, analyze your chances for success under these Rules. (20 Points)*

The case is not dismissed under Rules 12(b)(1) or 12(b)(3) and it is now time to file an answer.

**B.** *The partner returns to your office and asks whether your answer should contain any affirmative defenses under Rule 8(c) and whether you might be able to bring any claims or join any parties under Rules 13, 14, or 20. IN NO MORE THAN 150 WORDS, advise her, taking care to analyze whether there will be subject matter jurisdiction over any such claims. (20 Points)*

The responsive pleading is filed and it is time to begin thinking about discovery.

**C.** *The partner returns to your office yet again and asks whether, before resources are squandered on discovery, you might have a basis for quickly moving for summary judgment under Rule 56(b). Bear in mind that the grounds for any such summary judgment motion may duplicate an affirmative defense mentioned in answer to question III-B. IN NO MORE THAN 75 WORDS, advise her, noting the documents that you would attach to your summary judgment motion. (10 Points)*

**END OF EXAMINATION**