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Federal Jurisdiction and Procedure: Final Examination (January 27, 1956)

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FEDERAL JURISDICTION AND PROCEDURE

Final Examination

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I.

Plaintiff is a resident of Richmond, Virginia. Defendant Principal is a police officer and resident of the City of Richmond. Defendant Bonding Company is a New York Corporation and surety on the bond of Principal. The bond is in the sum of \$3,500 and conditioned upon the faithful discharge of the duties of the principal therein named and recites that the principal and surety are jointly and severally bound. Prior to bringing this suit, Plaintiff instituted an action in the Virginia State court against Principal for false arrest and malicious prosecution, obtained a verdict for \$5,000, and final judgment was entered thereon. Execution on the judgment was returned "no property found." Plaintiff then instituted this action in the Virginia State court against Bonding Company to subject the bond to payment of the amount of the judgment, joining Principal as a defendant. No relief is asked against Principal. Bonding Company removed the action to the Federal District Court, and Plaintiff moves to remand to the State Court. Discuss the issues on the motion and its probable outcome.

II.

Railroad was incorporated by a Special Act of the State that included a provision for exemption from taxation, and operated for many years under that charter. Subsequently the State Constitution was amended to provide that all exemptions from taxation heretofore granted in corporate charters are declared to be henceforth null and void. State Revenue Commissioner is threatening to act pursuant to this amendment by proceeding against Railroad for the collection of taxes on behalf of the State and every County through which Railroad operates. Railroad, claiming that this threatened taxation would be an unconstitutional impairment of contract obligation, filed suit in the State court seeking injunctive relief. Relief was denied without reaching the merits when the State Supreme Court held that the action was an unconsented suit against the State which could not be maintained in the State courts. As counsel for Railroad you wish an opportunity to have the case passed upon by the United States Supreme Court, if need be. Explore the possibilities of ultimately obtaining Supreme Court consideration of the merits and discuss the procedural obstacles that must be overcome.

III.

A Virginia creditor of an insolvent Pennsylvania building and loan corporation brought a bill in equity in the Federal District Court in Pennsylvania, alleging diversity of citizenship and the requisite jurisdictional amount and praying for the appointment of a receiver to liquidate the business. Statutes of Pennsylvania prescribe the procedure for the liquidation of such corporations under the direction of a Secretary of Banking, and provide for exclusive jurisdiction in certain of its State courts if a controversy arises in the course of a liquidation which requires litigation. After notice and hearing, the Secretary is authorized to take possession of the business and property of a building and loan association when it appears to be in an unsafe or unsound condition to continue business. The Act specifically authorizes the Secretary to take possession of the property of the association when it is in the hands of a receiver appointed by any court. The Secretary, after the prescribed hearing, found the association insolvent and in the hands of the Federal court-appointed receiver. He made and filed his certificate "taking possession" of the property. He sought to intervene in the Federal court suit and, over the objection of Virginia creditor, compel the Federal court-appointed receiver to relinquish possession of the insolvent business. What action is the District Court likely to take in the circumstances?

IV.

Illinois executor brought an action against Air Lines, a Minnesota corporation, in a Federal court in Illinois, invoking the Kentucky wrongful death statute to recover damages for the death of his decedent, an Illinois citizen, in the crash of an airliner in Kentucky. Defendant moved to dismiss on the grounds that executor had not properly qualified in conformance with Illinois law and that his appointment was void. Plaintiff was given an opportunity to cure the defect and decision on the motion was held in abeyance. Plaintiff qualified properly and then amended his complaint to set forth the new proper appointment. Defendant claimed that the action was barred and moved for judgment on the pleadings, contending that the amendment was effected after the running of the Kentucky statute of limitations applicable to wrongful death actions and that, under Illinois law, amendments do not relate back to the date of the original pleading and cannot cure a defective cause of action after the running of the statutory period. Federal Rule 15(c) provides that whenever the claim asserted in the amended pleading arises out of the transaction or occurrence set forth in the original pleading, the amendment relates back to the date of the original pleading. The rule in Kentucky is similar to the Federal rule. What disposition should be made of defendant's motion?

V.

A creditors bill to set aside a conveyance of a stock of merchandise had been denied on the merits by the United States District Court for the Eastern District of Virginia, the court finding that the conveyance was for full value. Plaintiffs in that action were creditors, none of whom were residents of Virginia, suing on behalf of themselves and all other creditors similarly situated choosing to come in and share the expense of the litigation. Defendants were the Debtor, a Virginia corporation, and Transferee, a resident of Virginia. Thereafter C, a resident of Virginia and a creditor who had not joined in the former suit, commenced action against Debtor and Transferee in the Virginia State court to set aside the conveyance, contending that it was fraudulent. Transferee sought an injunction in the Federal court to restrain C from further proceeding with the State court action. C moved to dismiss the bill on the grounds (1) that the Federal court was without jurisdiction to entertain the bill involving only Virginia residents, (2) that the relief sought was in violation of the anti-injunction Act prohibiting Federal court restraints upon State court actions, (3) that C could not have joined in the original Federal court action and therefore the judgment could not bind him, and (4) that in any event he was not bound by that judgment. Discuss the merits of each of these contentions.

VI.

Virginia Contractor brought action against Owner, a Maryland corporation, in the United States District Court in Maryland to recover \$10,000 for work performed in the construction of a business premises for Owner in Alexandria, Virginia, and which Contractor claimed was not contemplated by the parties to be covered by the contract price. Owner denied that the work was outside of the contract price coverage and also counterclaimed against Contractor for \$2,500 damages allegedly caused by Contractor's delay beyond the date fixed by the contract for completion. Contractor sought to implead Subcontractor Plumber, a resident of Virginia, contending that the delay, if unjustified, was caused by Subcontractor in the installation of the plumbing and that Subcontractor would be liable in turn to Contractor for whatever liability might be determined on the counterclaim against Contractor. Without formally pleading, Subcontractor filed motion requesting the court (1) to quash the service of the summons upon him which had been effected in Virginia, (2) to deny the Court's jurisdiction to determine the claim against him as he and Contractor were citizens of the same state, (3) to deny the court's jurisdiction to determine the claim against him as the amount in controversy was less than the required \$3,000, (4) to dismiss the claim against him on grounds of improper venue, and (5) in any event to transfer the action to the District Court in Alexandria, contending that the venue was more convenient for all of the parties concerned in the District where the work was performed. Discuss the merits of each of the above contentions. Was it proper to raise these matters by motion before pleading instead of in the pleading?

VII.

Creditor, owed \$5,000 by Debtor, insured the life of Debtor in that amount. Subsequent to full discharge of the debt and while the policy was still in force Debtor died and Creditor filed claim with Insurer for the proceeds of the policy. Debtor's estate also claimed the proceeds in excess of the premiums paid by Creditor, contending that under the law of Texas, the State in which Debtor resided at the time of his death, a creditor cannot recover proceeds of insurance on the life of a debtor in excess of the amount of the debt still outstanding plus the costs to him of the policy, and that the excess is recoverable by the Debtor's estate. All other American jurisdictions, including Virginia, the State of Creditor's residence and wherein the policy had been issued, permit full recovery of the proceeds by a creditor, irrespective of the status of the debt. Insurer is a Connecticut corporation doing business in both Virginia and Texas. Debtor's estate commenced action against Insurer in the Texas State court to recover the \$4,000 proceeds in excess of Creditor's \$1,000 costs. Insurer has asked Creditor not to commence any action pending the determination of that suit and has agreed to waive the policy provision requiring action to be commenced within a stated period. Is it imperative that Creditor commence action against Insurer immediately? Discuss Creditor's position procedurally.