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Civil Procedure I (B): Final Examination (Fall 1971)

William & Mary Law School

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1. (180 points)

On June 17, 1971, Whitman Corporation, a conglomerate corporation headquartered in New Brunswick, New Jersey, brought an action in the northern district of New Jersey against the Tenneson Company, upon pleading, stating (after setting forth jurisdiction requirements):

(1) Tenneson Company sold on or about January 19, 1971 certain machinery to Whitman Corporation, which was never operative, and in so doing, breached implied and stated warranties.

(2) The Tenneson Company was specifically damaged in the amount of $250,000.

The defendant, Tenneson, first requested that the Judge disqualify himself, asserting he and his family held substantial blocks of stock in a company Whitman was to acquire (an assertion in fact not true). The Judge denied the motion, cited Tenneson's attorney for contempt and fined him $1,000, admonishing him to display higher professional standards.

Frustrated, but undaunted, Tenneson's counsel sought a change of venue of the southern district of Indiana, where Tenneson's manufacturing facilities were located. With an affidavit in support of the motion, he pointed out that all the personnel, facilities and production were located in Columbus, Indiana in the southern district of Indiana, that Whitman's employees had come there to inspect the equipment, that the agreement was reached there and that the equipment was in fact used in North Carolina, at a Whitman plant, not in New Jersey. They also sought a hearing on the motion. The judge summarily dismissed the motion without hearing.

Next, Tenneson sought to have the action dismissed as not stating a cause of action, or any alternative for a definite statement of facts and of the damages sought. The judge denied both motions.

Before trial, the judge noted the complex nature of the machinery and referred to a Master the determination of whether or not they were operative over the objection of Whitman.

After pre-trial, the sole issue in the order presented was the question of warranty coverage. This was ordered over Tenneson's objection that the issue should include possible negligent insulation or operation by workmen.

At trial, the Master's report was admitted, showing the machines inoperative. The plaintiff's witness introduced testimony as to the condition of the machinery, and also established that Tenneson had knowingly permitted the foreman of the crew which manufactured the machinery and two members of the crew who were intoxicated to assemble the equipment that they were incapable of performing their jobs. Tenneson's objection to this testimony was denied. Whitman also established damages of $310,000 and an implied agreement that there should be repair to the defective machinery by Tenneson. Tenneson then established that the specific warranties were not violated and excluded all implied warranties.
The case was submitted to the judge. Whitman's attorney requested a finding of negligence of Tenneson, based on the lack of supervision of employees, damages of $310,000, a finding of a duty for repair of the equipment and an order for the specific promise of repairs. Tenneson took objection to the proposed findings. The judge adopted them as his holding of the case. Assuming you are the party involved, and wish to have appellant review of each ruling against it:

(1) What is the most expeditious means of obtaining review, if any, in each situation? Discuss all affinitives and justify your conclusions.

(2) How would the Court of Appeals rule on the merits if an appeal was entertained? Why? What would have been the District Court Judge's proper course of conduct?

Please discuss each ruling separately in full in relation to both (1) and (2) in one paragraph.

2. (60 points)

On February 17, 1971, Dorffner struck Mooney's automobile at an intersection through which Mooney was proceeding at a green light. The city had recently installed a computerized traffic control system. Dorffner insisted that he also had a green light, although the City Traffic Controller asserted that this was impossible in depositions to both parties.

Discovery by Mooney developed the fact that Dorffner had, on two occasions, been seen to collapse in his yard by his neighbors. Counterwise, Dorffner employed two experts on computer technology as an adjunct to traffic control, with the view of possible use at trial.

Mooney seeks (1) an admission from Dorffner that he had suffered from blackouts and knew he might, at any time, have suffered from such a blackout, (2) an examination of Dorffner by a specialist in each of the following fields: (a) Internal Medicine, (b) Ophthalmology, (c) Neurology; and (d) Psychiatry; and (3) answers to interrogatory to Dorffner's experts concerning the factual evaluation of the city's computerized control system and their conclusions and opinions concerning it. Dorffner resists each request.

(1) What ruling on each request? If there is any factual information needed to determine the ruling, indicate it and the effect it will have upon the ruling.

(2) What ought the Court do if Dorffner and his attorney continue to resist if he is ordered to comply with the foregoing requests?

3. (60 points)

On January, 1970 the County Board of Herrimac County, North Carolina, rezoned an area for heavy industry. In the area was located adjacent to an ambitious five thousand lot housing development known as Herrimac Haven, which had been a limited success, having 1200 lots occupied by permanent houses, about one half of which were used in vacation periods only. Several miles to the south was located a thriving unincorporated resort area of Herrimac Beach, which had a permanent population of over 10,000, and a resort season population many times that number. The American International Aluminum Company, a Delaware Corporation, had an option to purchase the land rezoned and announced an intention to build an aluminum reduction plant of ultra-modern nature on the land. The total cost was to be $138,000,000 with 1300 employees, all of whom would be sufficiently compensated to reside in Herrimac Haven. The Herrimac Haven Citizens for a Better Environment protested, asked the County Board for rezoning, and asked the American International to refrain from undertaking this project. The County Board met and refused to reconsider.
After prolonged conversations, American International and Merrimac Haven Citizens for a Better Environment agreed that (a) Merrimac Haven Citizens for a Better Environment would not bring suit against American International and (b) that American International would install the best possible pollution control devices, believed to be those manufactured by the Corporation for Human Development, Inc., of East Houston, Texas (c) to eliminate pollution level by particulate count at no more than fifty percent of the federal or state standard, whichever was the more strenuous.

By September of 1971, American International Aluminum Company had built Phase I of its works, a $22,535,000 facility, using Corporation for Human Development pollution control equipment. Phase I immediately began discharging particles at least 200 percent of the federal requirement and 300 percent of the state standard.

Merrimac Haven Citizens for a Better Environment sought (1) a temporary restraining order for American International to cease operations; (b) a permanent injunction, and (c) damages of $1,200,000 itemized as $1,000 decline per house, or the alternative $3,600,000 in money damages if the plant continued operation as decline in value of each house and $7,200,000 in punitive damages. American International Aluminum resisted and attempted to implead Citizens for Human Development, which resisted, asserting that the equipment was negligently installed by Stoppingall Construction Co., Inc., (now bankrupt) and they were negligently operated by the American International Aluminum Co. and that therefore Corporation for Human Development was not liable.

How should the court rule on:

(1) The request for temporary restraining order. Consider the possible modifications that might be granted.

(2) The impleader question.

(3) Of the remedies sought by Merrimac Haven Citizens for a Better Environment, which is superior; how might they be elaborated to be made more effective?

(4) Discuss the appropriate limits of judicial action in this case.

(5) On what issues may American International Aluminum get a jury trial if the temporary restraining order is granted and a permanent injunction is sought? What effect will this have on issues in the determination of the permanent injunction?

4. (60 points)

Brecht Marble Company of New Jersey had a contract with Winstead Construction Company of Richmond, sub-contractor of Meyers Bellows, Inc. of Raleigh, North Carolina to supply marble for a new City Hall in Roanoke, Virginia. Brecht sues for failure to pay for marble and labor asking $112,000 in damages, and naming Winstead, Meyers, the City of Roanoke and Meyers's Surety, Allgood Insurance, as defendants. Meyers counterclaims against Brecht for overpayment of $27,000 to Brecht.

Winstead then crossclaimed against Meyers, the City of Roanoke, and Allgood Insurance for breach of contract, to wit non-payment of $135,000 due and on a second count crossclaimed against Meyers only for $250,000 in special and punitive damages, alleging that Meyers failed to prepare the site for insulation to Brecht's marble, that Meyers forced Winstead to work in inclement weather contrary to the contract, and that Meyers wrongfully terminated his contract with Winstead. Winstead also sought to sue the architect, Simpson Bros., in a third-party action, alleging improper supervision of Meyers and forcing Winstead to prepare the building for marble insulation in inclement weather and under possible conditions, seeking from Simpson all funds Winstead seeks from Meyers.
Heyers crossclaimed against Winstead for faulty works and causing a delay for $13,000 and for indemnity for any liability to Brecht.

(1) Which actions should be joined under the Federal Rules of Civil Procedure?

(2) How can the judge handle the unwheely situation, assuming all or most of the claims, are joined?