1973

Civil Procedure: Final Exam (May 1973)

William & Mary Law School

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1. P owned a truck which he used to haul commodities for others. E was the owner of boxes of liquors which were being hauled by P in P's truck. P's truck and D's truck collided, causing damage to both P's truck and to E's liquors. P and E join as plaintiffs and sue D in Federal court for alleged negligence which caused their property damage. D contends that there is improper joinder. Is he correct? Discuss.

2. P and E contracted in writing to buy Blackacre from D and D agreed to sell Blackacre to P and E. D failed to perform and P sued for specific performance. D demurred on the ground that "there was a defect in the parties plaintiff." What should the ruling be on the demurrer?

3. A, B and C were lawyers practicing separately. D made a written contract to retain A, B and C for the purpose of prosecuting a will contest. It provided that the lawyers would commence suit immediately and prosecute the suit with dispatch. It was provided that D would pay each of the lawyers $1,000.00 for their services, whether or not the case was tried or compromised. The matter was compromised and a sum was paid to D in settlement. A, B and C join as plaintiffs in suing D for $3,000.00 and allege the foregoing facts. The typical code section was in force. D demurs specifically for misjoinder. How should the court rule on the demurrer?

4. D and E signed a promissory note as makers to P as payee. There was no statute changing the common law joint liability on the note. P sued D alone in state X and took judgment against him but made no collection thereon. Later P sued B in the note in Federal court in state Y with diversity of citizenship as the ground for jurisdiction. E's answer set up in defense (1) that D and E were jointly liable on the note, (2) that E was not a party to the suit, etc. P demurs to the answer. How should the court rule? Discuss.

5. A tugboat was sunk in the Delaware River and five of its crew were drowned. D, owner of the tug, anticipated being sued by the representatives of the decedents and employed Lawyer L to defend him in the suit. L interviewed the four surviving crew members and had them sign statements which he prepared. He also made notes of oral interviews with other witnesses. P, one of the decedent's personal representatives, sued D and filed 39 interrogatories for answer by D. One of these, D refused to answer. It read as follows: "State whether any statements of the members of the crew of the Tug, J.N. Taylor, or of any other vessel were taken in connection with the towing of the car float and the sinking of the Tug, J.N. Taylor. Attach hereto exact copies of all such statements if in writing, and if oral, set forth in detail the exact provisions of any such oral statements or reports." D objected to answering this interrogatory on various grounds. His attorney made deposition that such statements were taken and the circumstances surrounding same. The U.S. District Court then ordered D and L to answer the interrogatory forthwith. They refused and the Court held both D and L in contempt and ordered them imprisoned until they complied with the order. Was this in error? Discuss.
6. P sues D for alleged negligent driving which caused injury to P. P shows that he is a stranger in the area of the accident and, being in the hospital as a result of his injury, is unable to find witnesses and get evidence. He therefore makes a motion seeking an order from the court to compel D to produce for inspection, copying and photographing, the following:

a. All written statements in the possession, custody or control of D from every person who was or claims to have been a witness to any material in the case.

b. All memoranda in possession, custody or control of D purporting to set forth the substance of any oral statements of every witness in the case.

c. Medical reports, X-rays, hospital records or other documents in possession, custody or control of D relating to the injuries of P.

The Federal Court ordered D to produce all of these. Was this in error? Discuss.

7. The petitioner, administrator of the estate of her son, Daniel, brought this action in federal court against the respondent shipowner—employer to recover damages for Daniel's death, which was alleged to have occurred when he fell and was drowned while working as a seaman on the respondent's ship docked in Ohio. She claimed a right to recover for the benefit of herself and of the decedent's dependent brothers and sisters under the Jones Act, which subjects employers to liability if by negligence they cause a seaman's injury or death. She also claimed a right of recovery under the Ohio wrongful death statute because the vessel allegedly was not seaworthy as required by the "general maritime law". The complaint in addition sought damages for Daniel's pain and suffering before he died, based on the Jones Act and the Ohio survival statute, respectively. The District Judge, holding that the Jones Act supplied the exclusive remedy, on motion of respondent, struck all parts of the complaint which referred to the Ohio statute or to unseaworthiness. He also struck all reference to recovery for the benefit of the brothers and sisters of the decedent, who, respondent had argued, were not beneficiaries entitled to recovery under the Jones Act while the mother was living. Petitioner immediately appealed to the Court of Appeals. The Court of Appeals proceeded to determine the controversy "on the merits as though it were submitted on an appeal", after respondent had moved to dismiss the appeal from the ruling, and the petitioner had filed a petition for mandamus or other appropriate writ commanding the District Court to vacate his original order and enter a new one. Write a brief, polished opinion in this case, as closely resembling the opinion of Justice Black as you are capable.

8. An employee of the U.S. Government drove a government car negligently which caused injury to Sam Sap. The employee was insured against liability by Aetna Company. The Company paid Sam Sap in full for his injuries and was subrogated to Sam Sap's position. The Company now sues the United States under the Federal Tort Claims Act. It is contended first that the Aetna Company cannot sue at all as subrogee; and second that it cannot sue in its own name. Are both or either contentions valid? Under the codes? Suppose the insured had suffered $5,000.00 loss and the Aetna had paid only $2,500.00 of the loss and the insured had assigned one-half of his claims to the Aetna Company (called a partial or equitable assignment), might the Company maintain an action against the United States?
9. Horton was employed by Wade and Son, a construction contractor doing work for Continental Can Company. He was injured while working on a metallic scaffold owned by Continental but was being used by Wade and Son in connection with its work for Continental. Wade and Son paid benefits to Horton under the Nebraska Workmen's Compensation Law. Subsequently, Horton instituted this action against Continental on the theory that the latter had negligently maintained the scaffold. Wade and Son was made a party defendant in order to protect its right of subrogation in any judgment obtained against Continental to the extent of its earlier workmen's compensation payments. Continental denied negligence and sought, by third party complaint, to assert that if it was liable to Horton, that liability arose only by reason of the active negligence by one Elbert T. Culver, an iron workers crew foreman of Wade and Son. The answer further asserted that Wade and Son, as Culver's employer and master, was ultimately liable. In the first part of its opinion, the District Court concluded that Elbert T. Culver could be made a third-party defendant but, because of a technical defect in Continental's motion papers, a new third party complaint was necessary.

Discuss Continental's attempt to make Wade and Son a defendant, in opinion form. Style and Structure are also to be taken into account in this instance.

10. P sues D, administrator of the estate of X, deceased, for injuries received through the alleged negligence of X in driving X's car against P and causing an accident in which X was killed. D entered a general denial and submitted to P statements which D requested P to admit. One statement was this: "the said plaintiff P has never filed a claim of any kind, either contingent or otherwise, to the probate court of Pierce County, Nebraska, against the estate of X, deceased." P refused to admit or deny the statement. D then applied to the court for an order requiring P to admit or deny such statement within 10 days or that the statement would be admitted to be true. P refused. Thereupon D applied to the court for summary judgment. In the jurisdiction the statute provided that all claims against a decedent's estate must be filed with the probate court within a specified time, which had expired. The Federal rule is also in force in the state. How should the Court rule on the motion? Discuss the subject generally.

E N D

Note: Each answer is valued at 10 points, with 100 being the possible score.