

1971

## Virginia Procedure: Final Examination (January 11, 1971)

William & Mary Law School

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Final Examination  
VIRGINIA PROCEDURE (L-69)

Mr. Phelps  
Monday, January 11, 1971  
Rooms 202, 213

I.

P, an infant, filed a motion for judgment in his own name against D, defendant, to recover damages for injuries received, and medical expenses and loss of wages resulting from an automobile accident. No responsive pleadings or grounds of defense were filed within twenty-one days after service of process, but the defendant filed a motion asking leave to file such pleadings, which was overruled, and a motion for a continuance which was also overruled. A few days later the case was set for hearing without any notification to defendant, but he found out about it and appeared. The plaintiff at the hearing proceeded to prove his case, but the court stopped him, whereupon he asked for a jury which the court empaneled on the issue of damages. The defendant objected to the admissibility of evidence of the plaintiff as to the amount of wages lost, and the objection was overruled. The defendant sought to cross-examine the witnesses of the plaintiff, but the court refused him permission to do so. The defendant then offered evidence to show the plaintiff had no legal claim, and evidence on the question of damages, but the court refused to permit the defendant to develop this evidence, or to address the jury.

Discuss the pleading problems raised by this case, and state how they should be resolved.

II.

- a. Under the Virginia Rules of Appellate Procedure, when, with whom and where does the appellant file his designation of the parts of the record to be printed?
- b. What parts of the record are designated for printing?
- c. When is the record transmitted to the Supreme Court of Appeals?
- d. Will the appeal be dismissed if the clerk fails to transmit the record as required by the rule?

III.

P, a citizen of Maryland, was injured in an automobile accident December 1, 1967 and brought an action against D, a citizen of Virginia, in the Federal District Court for the Western District of Virginia. After

the action was brought, P died in the hospital according to some evidence from an overdose of drugs administered by a nurse, and according to other evidence as a result of the accident. A motion was filed February 20, 1970 to substitute as plaintiff the personal representative of P, who had been duly appointed in Virginia, and to amend the pleadings to conform to an action under 8-633, or, under 8-628.1. The Federal Court dismissed the action for lack of jurisdiction. On March 1, 1970 the personal representative instituted an action, under 8-633 or 8-628.1, in the Circuit Court of the county in Virginia in which the cause of action arose. This court dismissed the action also. Discuss the rulings of the Federal and state court and state how you think they should have decided the case.

#### IV.

Plaintiff brought an action against John Doe under the Virginia uninsured motorist act for injuries received in an automobile accident occurring in Virginia, and process was served on plaintiff's insurance company under the provisions of 38.1-381 (e). The insurance company defended on the ground that a third party, X, was responsible for the accident, and also that its policy with plaintiff did not afford coverage for any accidents other than those occurring in the state of New York. Will the court permit the defendant to make these defenses? Explain.

#### V.

a. P was injured by the act of E, an employee of D, while E was acting within the scope of his employment. P sued D, the employer, and recovered a judgment which D paid. Thereafter P instituted an action against E, claiming punitive damages. Can the action against E be maintained. Explain.

b. Could the employer and employee have been sued jointly under the circumstances? Explain.