1972

Civil Procedure I: Final Examination (January 14, 1972)

William & Mary Law School

FINAL EXAMINATION

Civil Procedure

Mr. Curtis

I

John Rolfe is a resident and domiciliary of Virginia. On June 1, 1969, he purchased an automobile from the Stanley Steamer Car Agency, a Virginia corporation which does business only in Virginia. In purchasing the vehicle, Rolfe paid $50 down and signed a contract for the balance of the purchase price obligating himself to make 12 consecutive monthly payments of $50 each to the seller. Immediately after completing the purchase, Rolfe called upon Jerimiah Witless, an authorized agent of the Reckless Insurance Company, who sold Rolfe an automobile liability policy on behalf of the Reckless Insurance Company. Reckless is incorporated in Virginia, has its principal and sole office in Virginia, retains agents in Virginia, but has no offices or agents outside Virginia. However, Reckless Insurance Company does place advertisements in nationally circulated magazines solliciting mail order applications for life insurance. About sixty percent of the company's income is derived from the issuance of life insurance policies to non-Virginians.

Two weeks after purchasing the car, Rolfe began a business trip to New York in the new vehicle. En route he stopped over in Baltimore, Maryland, where he registered at the Sportsmen Motel on the evening of June 15, 1969. Reginald Vulture, a resident of Maryland, heard that Rolfe was in Baltimore and had recently bought the car from Stanley Steamer. Sometime earlier Vulture also had bought a car from Stanley Steamer, and Vulture believed Stanley Steamer had tortiously misrepresented the condition of the vehicle. On June 16, 1969, Vulture sued Stanley Steamer in a Maryland State court and obtained a writ of attachment over the debt owed Stanley Steamer by Rolfe. The local sheriff, after being unable to locate Rolfe, served process (including the writ) upon Miss Clark, the resident manager of the Sportsmen. On the evening of the 16th, as Rolfe was checking out of the motel Miss Clark handed him the papers left by the sheriff. Rolfe read the papers, tore them up, discarded them, and proceeded to New York. The next day the clerk of the Maryland court sent notice of Vulture's suit to Stanley Steamer. Upon receipt of the notice, Stanley Steamer by return mail sent the following letter to the Maryland court: "Dear Judge Mansfield, I don't owe Vulture a red cent. This whole thing is a farce. If I were you, I won't proceed any further with the matter. James Berry, Vice President, Stanley Steamer Car Agency." After receiving this letter, the Maryland court rendered judgment against Stanley Steamer for $1,000 and issued an order compelling Rolfe to send his monthly installment payments to Vulture. Both Stanley Steamer and Rolfe were notified of the judgment, and both ignored it.

In the meantime, Rolfe had arrived in New York, but not before he had been involved in an automobile accident in Pennsylvania in which Jason Helpless had been seriously injured. Several months later, after Rolfe had returned to Virginia, Helpless filed suit in Pennsylvania State court against Rolfe, alleging that the injuries he sustained in the accident were caused by Rolfe's negligence, and that those injuries amounted to $120,000. Helpless, however, did not attempt to serve Rolfe; rather he named the Reckless Insurance Company as defendant-garnishee, and served the Pennsylvania Insurance Commission under a State statute which provided, in pertinent part: "Any insurance company doing business in this Commonwealth shall be deemed to have appointed the Insurance Commission as its agent to

receive service of process in any action directly or indirectly arising out of or related to its insurance business." As required by statute, the Insurance Commission by mail notified Reckless and Rolfe of the action. Subsequently, judgment for $60,000, the policy limit, was rendered against Reckless, which had appeared unsuccessfully in the action to contest jurisdiction. Reckless thereupon paid $60,000 to Helpless.

Quite awhile later, but within all applicable statutes of limitation, Vulture filed suit in a Virginia court against Stanley Steamer and Rolfe to enforce the Maryland judgment. Stanley Steamer and Rolfe moved to dismiss on the ground that the Maryland decres was a nullity.

Simultaneously Helpless sued Rolfe in another Virginia court to collect $60,000 for damages arising out of the automobile accident. Reckless refused to defend Rolfe who then impleaded Reckless. Reckless resists the impleader on the ground that it discharged its duties under the policy when it paid the $60,000 judgment. What dispositions should the Virginia courts make of these two suits?

II

Part 1. Joe Thundercloud, a Mohigan Indian, residing in New York State, organized a sit-in demonstration directed against the Syracuse, New York, Elks Club, on July 4, 1971. Joe and several other Mohigans entered the premises of the Elks Club, sat down in the main lobby, and refused to leave until the club accepted their applications for membership in the club. They were advised by a representative of the club that Mohigans were not eligible for membership and that their applications would not be entertained. When the demonstrators persisted in their sit-in, the Elks Club had them arrested under a local trespass statute.

In the course of the July 4 sit-in, Joe had seized a briefcase owned by Charles Hughes, a Virginia resident who had been a guest of the Elks Club and had left his briefcase in the lobby while he availed himself of the respite of the restroom. Unfortunately, Hughes had placed a rare Etruscan statue in his briefcase. Joe had seized the briefcase in order to use it as a weapon to employ in fighting off the police who had been called to arrest him. During the arrests, Joe struck police officer, Elmer Fudd, over the head with the briefcase and thereby inflicted a brain concussion on Fudd and shattered the statue.

Hughes afterward sued Joe for conversion of the vase in a New York court, alleging that the statue was valued at $15,000. Fudd also joined in the action, claiming that the personal injuries he suffered at Joe's hands amounted to $3,000. Joe sought to remove both cases to a New York federal court, claiming, among other things, that his actions were privileged under federal civil rights' legislation and that a substantial federal question was presented. Hughes and Fudd moved to remand the case to the State court.

How should the federal court rule on the motion?

Part 2. Assume the motion is denied and trial on the merits is had. After the presentation of evidence, Joe's lawyer asks for the following instruction: "If you, members of the jury, find that the defendant had a right under federal law to be present in the Elks Club on the day in question, you must find for the defendant." Plaintiff's counsel objects to the instruction on the ground that under New York tort law, even where a private privilege is invoked, one who injures another or another's property must compensate the other.

Should the instruction be given?

Part 3. Assume that the jury renders verdict in favor of both plaintiffs in the above suit. Thereafter, Joe travels to the Mohigan Annual Tribal Reunion in Vermont. While Joe is in Vermont, he is served with the process of a Vermont court in an action against him brought by the Elks Club International for trespass arising out of the July 4 sit-in. The Elks Club International was the legal owner of the premises occupied by the Syracuse chapter. Since Joe was a non-resident of Vermont, Elks Club International also attached Joe's automobile which he had brought with him to the reunion. Joe appeared before the Vermont court for the sole purpose of contesting the jurisdiction of the court over his person and automobile. The court, however, found that, while personal jurisdiction over Joe was doubtful, jurisdiction in rem was properly acquired over the car. Joe immediately withdrew from the action, did not join issue on the merits, and returned to New York. The Vermont court then found the car to be worth $500 and gave judgment in that amount for Elks Club International.

Elks Club International believed it had suffered losses of $1,500 in the sit-in and thus instituted a new trespass suit against Joe in a New York court. Joe moves to dismiss the action on res judicata grounds and counterclaims for $500 asserting that the Vermont attachment deprived him of property without due process since the Vermont court lacked jurisdiction. The Elks Club moves to dismiss the counterclaim on res judicata grounds.

How should the New York court rule on Joe's motion?

III

Part 1. Dick Macy was seriously injured in an accident in his home on April 1, 1971. He is taken for treatment to the office of Spiro Spock, M.D., who determined that a blood transfusion was necessary to save Macy's life. Spock thereupon transfused blood into Macy. Thereafter, Macy developed hepatitis, which he believed was transmitted to him in the transfusion. On March 15, 1972, Macy filed suit in a Virginia State court against Spock for damages suffered in contracting hepatitis.

Macy's complaint, in pertinent part, alleged that Spock sold blood to him in the scope of Spock's regular business, that the blood so sold was contaminated with hepatitis, that in selling such blood, Spock impliedly warranted that the blood was wholesome and fit for its intended use, and that as the result of Spock's breach of these implied warranties, Macy suffered injury.

Spock filed a timely answer in which he (1) asked dismissal of the complaint on the ground that Virginia law did not treat a transfusion administered by a licensed physician as a sale and that no implied warranties were therefore made, and (2) sought to implead Kutter Laboratories, a California corporation, on the theory that he had purchased the blood from Kutter Laboratories and that any claim arising out of the transfusion lay only against Kutter.

Assume in answering this question that Virginia follows the Federal Rules of Civil Procedure.

The court on April 2, 1972, ruled that Macy had not stated a claim under Virginia law for the reason advanced in Spock's answer and dismissed the action as to Spock. However, the court did allow the impleader and permitted Macy to amend his complaint to state a claim against Kutter on a strict liability theory (hereinafter referred to as the third-party claim). Spock had already obtained proper service upon Kutter. Immediately after the court took the above action, Macy moved to amend his complaint to allege that Spock had been negligent in transfusing him with the infected blood. Spock demurred to the amendment on the ground that the applicable one year statute of limitations had run.

Kutter Laboratories lodged timely objection to the impleader and third-party claim.

The court overruled Kutter Laboratories' objection and Spock's demurrer. Were these rulings correct?

Part 2. After its objection was overruled, Kutter Laboratories answered by admitting it had sold contaminated blood to Spock but moving that no privity existed between itself and Macy, and therefore, as a matter of law, the third-party claim should be dismissed. Spock by affidavit alleged that there is no known test for determining the presence of hepatitis in blood and appended to the affidavit sworn statements of three well-known medical school professors to the same effect. On the basis of the affidavit, Spock moved for summary judgment on the theory that there was no basis for finding negligence. Macy replied with his own affidavit asserting that the existence of a test for hepatitis is a fact question for the jury and that the truthfulness of the professor's statements likewise should be left to the jury. Macy asked that the motion for summary judgment be denied and informed the court that he intended to cross-examine the professors vigorously at trial. Macy also moved for summary judgment against Kutter Laboratories on the ground that it was clear under Virginia law that privity was not required under the facts alleged in his pleadings.

How should the court rule on these motions?