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Memorandum 71-40

Subject: Study 71 - Pleading (Separate Statement of Causes)

Attached is a staff draft of a tentative recommendation dealing with the separate statement of causes of action requirement. After giving the problem considerable thought, the staff believes that there should be no provision for a demurrer on the ground that causes are not separately stated. Any uncertainty in a pleading that does not state causes of action separately can be cured by a demurrer on the ground that the pleading is uncertain. And if there is no uncertainty caused by the failure to separately state causes, the demurrer serves no useful purpose. We have no concern that the judge will have any difficulty in making an appropriate ruling in any case where causes are not separately stated under the general authority to require amendment of a pleading that is uncertain. On the other hand, we are concerned that adding an additional ground for demurrer might lead to demurrers to pleadings that are not uncertain.

Respectfully submitted,

John H. DeMouly
Executive Secretary

#71

June 4, 1971

STATE OF CALIFORNIA
CALIFORNIA LAW
REVISION COMMISSION

TENTATIVE RECOMMENDATION

relating to

SEPARATE STATEMENT OF
CAUSES OF ACTION

PRELIMINARY STAFF DRAFT

CALIFORNIA LAW REVISION COMMISSION
School of Law
Stanford University
Stanford, California 94305

WARNING: This tentative recommendation has been prepared by the staff of the Law Revision Commission. The draft has not been considered and therefore may not reflect the views of the Commission.

LETTER OF TRANSMITTAL

To: HIS EXCELLENCY, RONALD REAGAN
Governor of California and
The Legislature of California

The California Law Revision Commission was authorized by Resolution Chapter 224 of the Statutes of 1969 to study various aspects of pleading. The Commission submitted a recommendation on this subject to the Legislature at its 1971 session. See Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions (1970), reprinted in 10 Cal. L. Revision Comm'n Reports 501 (1971).

Most of the legislation recommended in the Commission's 1970 report was enacted in 1971. Cal. Stats. 1971, Ch. . However, before the bill introduced to effectuate the Commission's recommendations was enacted, the Commission withdrew the changes it had recommended in the law relating to the requirement that causes of action be separately stated so that this requirement could be given further study. **After further study, the Commission makes this recommendation.**

Respectfully submitted,

Thomas E. Stanton, Jr.
Chairman

RECOMMENDATION OF THE CALIFORNIA
LAW REVISION COMMISSION

relating to

SEPARATE STATEMENT OF CAUSES OF ACTION

In 1971, upon recommendation of the Law Revision Commission,¹ the Legislature enacted legislation that modernized California pleading practice.² The 1971 legislation does not, however, make any change in the requirement that causes of action be separately stated, and the substance of former Code of Civil Procedure Section 427 is continued in Code of Civil Procedure Section 425.20.

Section 425.20, which requires that each cause of action be separately stated but provides exceptions for certain types of frequently occurring causes of action, reads:

425.20. (a) Except as otherwise provided by law, causes of action shall be separately stated.

(b) In any action brought by the husband and wife, to recover damages caused by any injury to the wife, all consequential damages suffered or sustained by the husband alone, including loss of the services of his wife, money expended and indebtedness incurred by reason of such injury to his wife, may be alleged and recovered without separately stating such cause of action arising out of such consequential damages suffered or sustained by the husband.

(c) Causes of action for injuries to person and injuries to property, growing out of the same tort, need not be separately stated.

The separate statement requirement--while sometimes raised as an additional ground for demurrer when a complaint is objected to as uncertain--is

1. Recommendation and Study Relating to Counterclaims and Cross-Complaints, Joinder of Causes of Action, and Related Provisions, 10 Cal. L. Revision Comm'n Reports 501 (1971).

2. Cal. Stats. 1971, Ch. .

a technical requirement that serves no useful purpose. As Witkin³ points out:

No doubt it is desirable to require the plaintiff to state his causes of action separately and not in a confusing hodgepodge, but the distinct ground of uncertainty . . . should be sufficient to take care of that defect. The demurrer for lack of separate statement goes much further and would condemn a pleading which is a model of organization, brevity and clarity, and which sets forth all the essential facts without repetition or needless admixture of legal theory. Under the primary right test of the cause of action the same acts or events may invade several rights and give rise to several causes of action. To withstand demurrer the complaint must either repeat or incorporate by reference the same facts in separately stated counts, so that each count will be complete in itself. . . . The difficulty of distinguishing between truly separate causes of action and the same cause pleaded in accordance with different legal theories . . . leads the pleader to err on the safe side and set forth as many "causes of action" as he can think of. In order to make the separate causes appear distinct, legalistic terminology appropriate to the different theories is employed in drafting the counts, with the result that many of the same facts are confusingly restated in different language. In brief, the requirement of separate statement, and its corresponding ground of demurrer, encourage prolixity and uncertainty in the statement of the facts constituting the cause or causes of action.

There is no need to retain failure to separately state causes of action as a distinct ground for demurrer. In cases where a separate statement is needed for a clear presentation of the issues or to permit a party to frame a responsive pleading, the court has adequate authority to require appropriate amendment of the complaint where the pleading is objected to on the ground that it is uncertain. Accordingly, the Commission recommends that Section 425.20 of the Code of Civil Procedure be repealed and that Section 430.10 of the Code of Civil Procedure be amended to delete the reference to the separate statement requirement.

3. 2 B. Witkin, California Procedure Pleading § 497(2) at 1486 (1954) (citations omitted).

The Commission's recommendation would be effectuated by the enactment of the following measure:

An act to amend Section 430.10 of, and to repeal Section 425.20 of, the Code of Civil Procedure, relating to pleading.

The people of the State of California do enact as follows:

Section 1. Section 425.20 of the Code of Civil Procedure is repealed.

~~425.20. (a) Except as otherwise provided by law, causes of action shall be separately stated.~~

~~(b) In any action brought by the husband and wife, to recover damages caused by any injury to the wife, all consequential damages suffered or sustained by the husband alone, including loss of the services of his wife, money expended and indebtedness incurred by reason of such injury to his wife, may be alleged and recovered without separately stating such cause of action arising out of such consequential damages suffered or sustained by the husband.~~

~~(c) Causes of action for injuries to person and injuries to property, growing out of the same tort, need not be separately stated.~~

Comment. See the Comment to Section 430.10.

Sec. 2. Section 430.10 of the Code of Civil Procedure is amended to read:

430.10. The party against whom a complaint or cross-complaint has been filed may object, by demurrer or answer as provided in Section 430.30, to the pleading on any one or more of the following grounds:

(a) The court has no jurisdiction of the subject of the cause of action alleged in the pleading.

(b) The person who filed the pleading does not have the legal capacity to sue.

(c) There is another action pending between the same parties on the same cause of action.

(d) There is a defect or misjoinder of parties.

~~(e) -- Causes of action are not separately stated as required by Section 425.20.~~

~~(f)~~ (e) The pleading does not state facts sufficient to constitute a cause of action.

~~(g)~~ (f) The pleading is uncertain. As used in this subdivision, "uncertain" includes ambiguous and unintelligible.

~~(h)~~ (g) In an action founded upon a contract, it cannot be ascertained from the pleading whether the contract is written or oral.

Comment. Section 430.10 is amended to delete failure to state causes of action separately as a distinct ground for demurrer. This provision tended to encourage "prolixity and uncertainty in the statement of the facts constituting the cause or causes of action." See 2 B. Witkin, California Procedure Pleading § 497(2) at 1486 (1954). See also Recommendation Relating to

Separate Statement of Causes of Action (1971), reprinted in 10 Cal. L.

Revision Comm'n Reports (1971). There is no need to retain failure to separately state causes of action as a separate ground for demurrer; in cases where a separate statement is needed for a clear presentation of the issues or to permit a party to frame a responsive pleading, the court has adequate authority to require appropriate amendment of a pleading where the pleading is objected to on the grounds that it is uncertain.