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Memorandum 71-42

Subject: Study 71 - Pleading (Compulsory Joinder of Causes)

Attached is a staff draft of a tentative recommendation dealing with compulsory joinder of causes.

Respectfully submitted,

John H. DeMoully
Executive Secretary

#71

June 4, 1971

STATE OF CALIFORNIA

C A L I F O R N I A L A W

R E V I S I O N C O M M I S S I O N

TENTATIVE RECOMMENDATION

relating to

COMPULSORY JOINDER OF CAUSES OF ACTION

PRELIMINARY STAFF DRAFT

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

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 recommended legislation was enacted in 1971. See Cal. Stats. 1971, Ch. . However, before the bill introduced to effectuate the Commission's recommendation was enacted, a section providing for limited compulsory joinder of causes of action by plaintiffs was deleted. This deletion was made so that this matter 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

COMPULSORY JOINDER OF CAUSES OF ACTION

BACKGROUND

Since 1872, a defendant in a civil action in California has been required to assert by counterdemand any cause of action he has against the plaintiff that arises out of the same transaction or occurrence alleged in the complaint.[1] This requirement is continued in legislation enacted by the 1971 Legislature upon the recommendation of the Law Revision Commission,[2] along with added provisions to protect the defendant against unjust forfeiture of a cause of action.[3] There is at present no comparable requirement that a plaintiff join all causes of action that arise out of the same transaction or occurrence as the cause he alleges in his complaint.[4]

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1. See former Code of Civil Procedure Section 439:

> 439. If the defendant omits to set up a counterclaim upon a cause arising out of the transaction set forth in the complaint as the foundation of the plaintiff's claim, neither he nor his assignee can afterwards maintain an action against the plaintiff therefor.

2. Cal. Stats. 1971, Ch. . See Code of Civil Procedure Section 426.30. Cf. 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).

3. See Code of Civil Procedure Sections 426.30(b) and 426.50. See also Code of Civil Procedure Sections 426.40 and 426.60.

4. For a discussion of the existing California law, see Friedenthal, Joinder of Claims, Counterclaims, and Cross-Complaints: Suggested Revision of the California Provisions, 23 Stan. L. Rev. 1, 11-14 (1970).

The reasons that a defendant is required to assert all causes of action that arise out of the transaction or occurrence upon which he is sued are clear. It is desirable in the interest of judicial economy that parties to a lawsuit dispose of all related claims in one action. In addition to limiting multiple lawsuits, the requirement also minimizes trial expenses, for causes of action arising out of the same transaction or occurrence will ordinarily involve the same witness if not identical issues. And, the defendant is prevented from harassing the plaintiff by bringing several suits to recover for damages arising out of one transaction or occurrence.

The reasons that support the requirement that a defendant assert all related causes of action apply with equal or greater force to a plaintiff. The plaintiff, because he initiates the action, is normally in a better position than the defendant to determine the possible causes of action that arise out of the same transaction or occurrence. Often the plaintiff has more time and opportunity to determine the facts before he files his complaint than the defendant has to file his cross-complaint. In some cases, as where an employer is sued for the act of an employee, the defendant may not even be aware of the occurrence that gave rise to the plaintiff's action. Moreover, the disparate treatment of joinder requirements gives the plaintiff a tactical advantage in litigation over the defendant without apparent justification. Plaintiffs' attorneys have been known to abuse this advantage. For example, in a vehicle accident case, the plaintiff may first bring an action for property damage in the hope that it will not be vigorously defended. A judgment in the plaintiff's favor in that action will then be conclusive on the issue of liability in a subsequent action brought by the plaintiff for his personal injuries. Finally, as a practical matter, a plaintiff seldom fails to plead all causes arising out of the same transaction

or occurrence both for the sake of convenience and because he fears that the rules of res judicata or collateral estoppel may operate to bar any causes he does not plead.[5]

RECOMMENDATION

The Commission recommends that the plaintiff in a civil action be required to join all causes that arise out of the transaction or occurrence that is the basis of his complaint. The same provisions designed to prevent unjust forfeiture of a related cause of action of a defendant should apply to the plaintiff.[6] Adoption of these rules will have several beneficial consequences. The litigation positions of plaintiffs and defendants will be equalized. Court time and expense will be economized. The law governing compulsory joinder of causes of action will be clarified, thus eliminating the need to rely on the uncertain rules of res judicata and collateral estoppel to determine whether a cause is barred by failure to assert it in a prior action.

While adoption of these rules will clarify and improve the law, they will not impose any substantial new burdens on litigants or on the court system. The courts have adequately handled problems arising under the

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5. Ibid.

6. E.g., Code of Civil Procedure Sections 426.40 (compulsory joinder not required where cause of action not pleaded requires for its adjudication the presence of additional parties over whom the court cannot acquire jurisdiction, where both the court in which the action is pending and any other court to which the action is transferrable pursuant to Section 396 are prohibited by the federal or state constitution or by a statute from entertaining the cause of action not pleaded, or where, at the time the action was commenced, the cause of action not pleaded was the subject of another pending action), 426.50 (relief for party who acted in good faith in failing to plead related cause of action), 426.60 (compulsory joinder not required in special proceedings, in actions in small claim court, or where only relief sought is declaratory relief).

defendant's compulsory joinder requirement. And the possibility that plaintiffs will be encouraged to press causes of action they would not ordinarily pursue is minimal in view of the practice to join all related causes as a matter of course. Any burdens added to the litigation will be outweighed by benefits the compulsory joinder rule will provide.

The Commission also recommends that somewhat narrower language be used to describe those actions which must be joined.[7] The compulsory joinder provisions should not be broadly interpreted to bar unpleaded causes.

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7. See the discussion, infra, in the Comment to Section 426.10 of the recommended legislation.

PROPOSED LEGISLATION

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

An act to amend the heading for Article 2 (commencing with Section 426.10) of Chapter 2 of Title 6 of Part 2 of, to amend Section 426.10 of, and to add Section 426.20 to, the Code of Civil Procedure, relating to pleading.

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

Section 1. The heading for Article 2 (commencing with Section 426.10) of Chapter 2 of Title 6 of Part 2 of the Code of Civil Procedure is amended to read:

Article 2. Compulsory Joinder of Causes of Action; Compulsory Cross-Complaints

Sec. 2. Section 426.10 of the Code of Civil Procedure is amended to read:

426.10. As used in this article:

(a) "Complaint" means a complaint or cross-complaint.

(b) "Plaintiff" means a person who files a complaint or cross-complaint.

(c) "Related cause of action" means a cause of action which arises out of the same transaction , or occurence ~~, or series of transactions or occurrences~~ as the cause of action which the plaintiff alleges in his complaint.

Comment. The definition of Section 426.10 of "related cause of action" provides a convenient means for referring to a cause of action which arises out of the same transaction or occurrence. Subdivision (c) adopts substantially the same language as was used in former Code of Civil Procedure Section 439 (compulsory counterclaims). As to the interpretation given this language, see Brunswig Drug Co. v. Springer, 55 Cal. App.2d 444, 130 P.2d 758 (1942); Sylvester v. Soulsburg, 252 Cal. App.2d 185, 60 Cal. Rptr. 218 (1967). The language used in subdivision (c) of Section 426.10 is not as broad as the somewhat similar language used in subdivision (b) of Section 428.10(b)(permissive cross-complaints) since the two provisions serve different purposes and should be interpreted accordingly. Subdivision (c) defines a term used in sections which operate to bar an unpleaded cause of action and these sections should not be broadly interpreted to bar unpleaded causes; Section 439, on the other hand, permits but does not require the joinder of causes in a cross-complaint and should be liberally interpreted to permit joinder.

Sec. 3. Section 426.20 is added to the Code of Civil Procedure, to read:

426.20. Except as otherwise provided by statute, if the plaintiff fails to allege in his complaint a related cause of action which (at the time his complaint is filed) he has against any party who is served or who appears in the action, the plaintiff may not thereafter in any other action assert against such party the related cause of action not pleaded.

Comment. Section 426.20 requires a party to join all causes of action arising from the transaction or occurrence pleaded in his complaint or cross-complaint. (See Section 426.10 defining "complaint," "plaintiff," and "related cause of action.")

This requirement results normally under the rule in those jurisdictions which follow the so-called operative facts theory of a cause of action for res judicata purposes. However, California has followed the "primary rights theory" of a cause of action, and res judicata applies only where the cause not pleaded is for injury to the same primary right. See 3 B. Witkin, California Procedure Pleading §§ 22, 23 (2d ed. 1971); 3 id. Judgment §§ 59-60 (1954). Nevertheless, even where different primary rights are injured, collateral estoppel would bar an unpleaded cause of action if precisely the same factual issues are involved in both actions. See 3 B. Witkin, California Procedure Judgment §§ 62-64 (1954).

Only related causes of action that exist at the time the party files his complaint or cross-complaint must be joined. Thus, for example, although Section 426.20 may operate to bar an unpleaded related cause of action for damages accrued at the time of filing a complaint, it does not bar a later

action for recovery of damages accruing thereafter for which the party did not have a cause of action existing at the time the complaint was filed. Cf. Chavez v. Carter, 256 Cal. App.2d 577, 64 Cal. Rpter 350 (1967)(compulsory counterclaims); Babb v. Superior Court, 3 Cal.3d 841, Cal. Rptr. , P.2d (1971)(permissive cross-complaint).

Service on or appearance of a particular party determines whether a related cause of action against that party is required by Section 426.20 to be alleged in the complaint or cross-complaint. Thus, if a particular party is not served at all and makes no appearance, Section 426.20 does not bar a related cause of action against him. Moreover, Section 426.20 does not apply under certain circumstances because of jurisdictional considerations. See Section 426.40.

Section 426.20 is inapplicable to special proceedings, actions in small claims court, and where only declaratory relief is sought. See Section 426.60. See also, e.g., Civil Code Section 4001 (Judicial Council rule gover ing proceedings under Family Law Act). Specific statutes may allow the splitting of causes, and these statutes prevail over Section 426.20. See, e.g., Civil Code Section 1951.4. Section 426.20 has no effect on the independent application, if any, of the rules of res judicata (including the rule against splitting a cause of action) and collateral estoppel.

It is important to note that a court must grant a party who acted in good faith leave to amend his complaint to assert a related cause of action not pleaded. See Section 426.50.