Memorandum 68-96

Subject: New Topics - Pleadings in Civil Actions

Commissioner Wolford suggested that the Commission request authority to make a study concerning the form of the answer where the defendant desires to deny a matter for lack of information or belief. He believes that Section 437 of the Code of Civil Procedure should be amended to provide that an allegation of the complaint may be denied in the answer by stating that "defendant is without knowledge or information sufficient to form a belief as to the truth of the allegation." Such a denial would replace the present form of denial that "the defendant has no information or belief upon the subject sufficient to enable him to answer and, placing his denial on that ground, denies." Witkin notes, in 2 Witkin, California Procedure 1514:

> A deviation which has received harsh treatment in California is to place the denial on the ground that "defendant has no knowledge or information sufficient to form a belief." By this statement he merely denies for lack of information, and does not directly deny for lack of belief. The defect is fatal, and the purported denial raises no issue. [Citations omitted.] In some states this perfectly reasonable method of denial is authorized by statute [citations omitted], and it is approved in the federal practice. [See Exhibit I for Federal Rules of Civil Procedure, Rule 8 and Form 20 (see Third Defense).]

We have some concern about the desirability of requesting authority to make such a narrow study. The Legislature, I am sure, looks to the Law Revision Commission to make studies that are more complex and controversial. We think the suggestion is a good one, however, and we suggest that the Commission consider directing the Executive Secretary to write to or discuss the matter with Assemblyman

Bagley, Chairman of the Assembly Committee on Judiciary, suggesting that he might wish to introduce a bill to make an appropriate amendment of Section 437 to eliminate unnecessary words in the answer and minimize the possibility that a technical error will be made in the form of a denial on the ground of lack of sufficient information or belief. We make this suggestion because Assemblyman Bagley could take care of this matter at the 1969 session if he believes the suggestion is a good one.

Despite the staff's suggested disposition of the precise suggestion made by Commissioner Wolford, we think that Commissioner Wolford has identified an area of law that is in need of study. See Exhibit II (attached) describing an expanded topic which the Commission might wish to study.

Respectfully submitted,

John H. DeMoully
Executive Secretary

Memo 68-96 EXHIBIT I

Rule 8.

GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a claim for relief, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds upon which the court's jurisdiction depends, unless the court already has jurisdiction and the claim needs no new grounds of jurisdiction to support it, (2) a short and plain statement of the claim showing that the pleader is entitled to relief, and (3) a demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded.

(b) Defenses; Form of Denials. A party shall state in short and plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

(c) Affirmative Defenses. In pleading to a preceding pleading, a party shall set forth affirmatively accord and satisfaction, arbitration and award, assumption of risk, contributory negligence, discharge in bankruptcy, duress, estoppel, failure of consideration, fraud, illegality, injury by fellow servant, laches, license, payment, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court on terms, if justice so requires, shall treat the pleading as if there had been a proper designation.

Form 20.

ANSWER PRESENTING DEFENSES UNDER RULE 12 (b)

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second Defense

If defendant is indebted to plaintiffs for the goods mentioned in the complaint, he is indebted to them jointly with G. H. G. H. is alive; is a citizen of the State of New York and a resident of this district, is subject to the jurisdiction of this court, as to both service of process and venue; can be made a party without depriving this court of jurisdiction of the present parties, and has not been made a party.

Third Defense

Defendant admits the allegation contained in paragraphs 1 and 4 of the complaint; alleges that he is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of the complaint; and denies each and every other allegation contained in the complaint.

Fourth Defense

The right of action set forth in the complaint did not accrue within six years next before the commencement of this action.

Counterclaim

(Here set forth any claim as a counterclaim in the manner in which a claim is pleaded in a complaint. No statement of the grounds on which the court's jurisdiction depends need be made unless the counterclaim requires independent grounds of jurisdiction.)

Cross-Claim Against Defendant M. N.

(Here set forth the claim constituting a cross-claim against defendant M. N. in the manner in which a claim is pleaded in a complaint. The statement of grounds upon which the court's jurisdiction depends need not be made unless the cross-claim requires independent grounds of jurisdiction.)

Memorandum 68-96

EXHIBIT II

A study to determine whether the California law relating to pleading should be revised and whether the Federal Rules of Civil Procedure furnish a basis for clairfication or modification of the California law.

"The pleadings are the formal allegations by the parties of their respective claims and defenses, for the judgment of the court." Code of Civil Procedure Section 420.

The code pleading system, introduced in California by the Practice Act, had its origin in the New York Code of 1848 (known as the "Field Code"). The system has remained essentially unchanged and is predicated largely on a basic policy that the pleadings should define the issues of the case. However, since its introduction, there have been tremendous changes in both deposition-discovery practice and pretrial procedure, which have greatly reduced the significance of the pleadings in framing the issues. Moreover, the existing rules can unfairly trap the unwary or inexperienced,[1] are easily circumvented by the skilled, and often require pleadings that are both cumbersome and meaningless.

A modernized form of code pleading for the federal courts exists in the Federal Rules of Civil Procedure. These rules eliminate a number

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1 See, e.g., Aronson & Co. v. Pearson, 199 Cal. 295, 249 Pac. 191 (1926) (denial on the ground that "defendant has no knowledge or information sufficient to form a belief," does not directly deny for lack of belief, is therefore defective and raises to issue); Connecticut Mut. Life Ins. Co. v. Most, 39 Cal. App.2d 634, 640, 103 P.2d 1013 (1940) (negative pregnant--specific denial of one admits all lesser included sums).

of technical requirements of the traditional Field Code and have served, in whole or in part, as a framework for pleading reform in other states.

A study should be made whether the law relating to pleading should be revised and whether the Federal Rules of Civil Procedure furnish a basis for clarification or modification of the California law.

Prepared by,

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