

10/16/68

Memorandum 68-104

Subject: New Topic -- Joinder of causes of action

The staff suggests that joinder of causes of action would be an appropriate small topic suitable for study by the Commission. The attached statement could be included in our Annual Report to request authority to study this topic.

Respectfully submitted,

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Executive Secretary

A study to determine whether the law relating to joinder of causes  
of action should be revised

Section 427 of the Code of Civil Procedure states the statutory rules governing joinder of causes of action. In general, these rules permit a plaintiff to unite several causes of action in one complaint where: (1) all causes belong to one and only one of the classes set forth in subdivisions(1) through (9) of Section 427; (2) all causes affect all parties to the action; (3) no cause requires a different place of trial; and (4) each cause is separately stated. The classes referred to consist essentially of the common law categories of claims, e.g., contracts, express or implied; injuries to person; injuries to property; these are supplemented by an overriding provision which permits joinder of all claims arising out of the same transaction.

As a result of piecemeal revision, enactment of related but conflicting legislation, and subsequent judicial interpretation, Section 427 has become unnecessarily complex <sup>1</sup> and misleading.<sup>2</sup> Moreover, the basic policy--avoidance of a multiplicity of suits--tends to

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<sup>1</sup>For example, the specific provision "that causes of action for injuries to person and injuries to property, growing out of the same tort, may be joined in the same complaint" seems to uselessly duplicate paragraph (8) which permits joinder of "claims arising out of the same transaction, or transactions connected with the same subject of the action." See 2 Witkin, California Procedure § 146 (1954).

<sup>2</sup>For example, Section 427 states that all causes of action joined "must affect all the parties to the action." This language seems to require that all parties involved must have a joint and common interest in every cause of action sought to be joined. However, Section 379b of the Code of Civil Procedure, which was enacted subsequent to Section 427, specifically provides that "it shall not be necessary that each defendant shall be interested as . . . to every cause of action included in any proceeding against him . . . ." (Emphasis added.) This inconsistency has been judicially resolved by permitting the latter rule to prevail. *Kraft v. Smith*, 24 Cal.2d 124, 148 P.2d 23 (1943). See also *Peters v. Bigelow*, 137 Cal.App. 135, 30 P.2d 450 (1934). Nevertheless the respective sections remain in apparent conflict.

be subverted by an inappropriate emphasis on proper pleading. Subject to the rules on joinder of parties, a better rule might be that all causes of action may be joined in the pleadings and later severed for trial if necessary at the discretion of the court. This is the practice in the federal courts reflected in Rule 18 of the Federal Rules of Civil Procedure. A study, therefore, should be made to determine whether the law relating to joinder of causes of action should be revised.

Prepared by

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