

PROBLEM SET 1

PDQ, Inc. is a new, grocery delivery business. Its goal is to negotiate contracts with grocery stores throughout the 51st state of Confusion, authorizing PDQ to deliver groceries to store customers for a fee, with the grocery stores receiving a percentage of the fees collected.

Plainterrible Groceries, Inc. is the biggest grocery store chain in the state. To get Plainterrible's attention, PDQ president Donald Defathead contacted Bentley Benign, who is Plainterrible Vice President and General Counsel. PDQ made Plainterrible a free, trial offer: PDQ promised to deliver groceries to Plainterrible customers for three months, free of charge, after which Plainterrible could decide whether to enter into a contract with PDQ to continue the delivery service for a fee. Plainterrible said OK.

PDQ began deliveries, and Plainterrible posted signs in all its stores advertising three months of free deliveries for its customers. After two weeks, however, PDQ negotiated a contract with Plainterrible's main competitor, Unweis Markets, pursuant to which PDQ would deliver groceries exclusively for Unweis, on a \$5 per delivery basis. PDQ stopped delivering groceries for Plainterrible and started delivering them exclusively for Unweis. The State Department of Consumer Protection warned Plainterrible that if it did not honor its advertised free delivery, it would be subject to severe civil and possibly criminal penalties. Accordingly, Plainterrible hired additional staff to make the three months of free deliveries, at a cost of \$100,000.

Plainterrible sued PDQ for common law "promissory estoppel", a contract-type claim. A plaintiff is entitled to recover damages for promissory estoppel, if he reasonably relied to his detriment on a promise that defendant made and broke, and defendant knew or should have known that plaintiff would rely to his detriment on defendant's promise. A key issue in the litigation is whether PDQ knew about the advertising Plainterrible posted in its stores. If PDQ knew, it would tend to show that PDQ knew Plainterrible was relying on PDQ's promise.

1. Plainterrible alleges in its complaint that it showed copies of the posters it placed in its stores to PDQ, and that PDQ thus knew Plainterrible was relying on PDQ's promise of free delivery. This allegation is untrue.

a. Counsel for plaintiff, who drafted the complaint, made the allegation on the basis of his own faulty recollection of an earlier conversation he had with Bentley Benign. Has counsel violated FRCP 11, and if so, what section? Can defendant recover attorneys fees associated with litigation surrounding the allegation?

b. Suppose that counsel for plaintiff, who drafted the complaint, read the draft allegation to Bentley Benign before filing it, and that Benign told counsel that the allegation was true. Has counsel violated FRCP 11, and if so, what section?

2. Suppose that the allegation at issue in problem 1 is true, and that it would support element 2 of a promissory estoppel claim, but that in the state of Confusion (whose substantive law both parties concede controls this case) there is a statute that says the

state “does not recognize a cause of action for promissory estoppel”. Has counsel violated FRCP 11, and if so, what section? Can the defendant recover attorneys fees associated with litigation surrounding the allegation? Are there alternative sanctions that can be imposed? Must sanctions be imposed?

a. Counsel for plaintiff and defendant are friends, and counsel for defendant, upon reading the complaint, assures counsel for plaintiff that he will not pursue Rule 11 sanctions as long as plaintiff does not pursue the promissory estoppel claim further. Is plaintiff necessarily off the hook?

b. How, if at all, would your answer change, if it was a 30 year old Confusion Supreme Court case, rather than a state statute, that rejected promissory estoppel as a cause of action?

3. Plaintiff is less concerned about getting damages than getting even. To ensure that PDQ bankrupts itself on legal fees, Plaintiff directs its lawyer to file a 75 page complaint with over 400 paragraphs, each of which makes a true but absurdly detailed allegation of remote relevance to the complaint. The cost to PDQ of hiring a lawyer to prepare an answer to each of the 400 allegations would be astronomical. Has counsel for plaintiff violated Rule 11, and if so, what section? Is there a procedural device other than Rule 11 that defendant might use to eliminate some of the excesses from the complaint?

4. Suppose that you have a client with a meritorious claim, who does not have the financial means to pay you if the matter goes all the way to trial. Your only hope is to pepper the opposing party with excessive pleadings and motions so as to force an early settlement by making it too expensive for him to continue. Despite the fact that your explicit purpose is to cause the opposing party unnecessary expense, you are confident that opposing counsel would be unable to prove it in a Rule 11 hearing. So . . . should you do it?

PROBLEM SET 2

The following is an excerpt from a complaint [paragraphs detailing jurisdiction and relief are omitted]. The elements of a cause of action for false imprisonment and assault are listed on page 122 of your text.

Count I: False Imprisonment

3. On July 19, 20__, plaintiff, a seller of encyclopedias by trade, called upon defendant at defendant's home, for the purpose of offering to sell defendant a set of encyclopedias.
4. After a brief discussion in defendant's living room, defendant stated that he was uninterested in purchasing a set of encyclopedias, said "good day", and left the house for his back yard.
5. Thereupon a German Shepherd dog entered the room, growled in a menacing manner, and for a period of 15 minutes prevented plaintiff from leaving the house.
6. Throughout that 15 minute interval, plaintiff was in fear of his life, as his captor just stood there, glaring at plaintiff.

Count II: Assault

7. Plaintiff realleges paragraph 1-3, and in the alternative to the allegations contained in paragraphs 4-6 pleads as follows:
8. After a brief discussion in defendant's living room, defendant stated that he was uninterested in purchasing a set of encyclopedias, and began to beat plaintiff with his fists, chasing plaintiff from the house.
9. Defendant is a known felon who tortures small animals for sport.

As counsel for the defendant, what procedural devices would you use to test various aspects of the complaint?

PROBLEM SET 3

Defendant pulls a chair out from under plaintiff, causing plaintiff injury. For purposes of these questions, you may assume that the elements of assault are: 1) defendant acts intending to cause offensive contact with plaintiff; and 2) plaintiff is put in imminent apprehension of harmful contact (which will necessarily be true if offensive contact occurs). You may assume further, that the complaint properly pleads jurisdiction and relief.

A. In the first draft of the complaint, plaintiff makes the following allegations:

1. On May 11, 20__, defendant pulled a chair out from under plaintiff, in a classroom at Bob's Elementary School.
2. Plaintiff fell to the floor, breaking her pelvis.

Defendant files a 12(b) 6 motion. Will he win?

B. Assume that plaintiff adds the following allegation to those listed in problem A:

3. Defendant's act of pulling the chair out from under plaintiff constituted assault.

Will the addition of this paragraph affect the outcome of defendant's 12(b) 6 motion?

C. Suppose that plaintiff adds a fourth allegation to the complaint:

4. Defendant saw that plaintiff was about to sit on the chair, and pulled the chair out from under plaintiff, knowing that she would fall to the floor.

Will the addition of this paragraph affect the outcome of defendant's 12(b) 6 motion?

D. Suppose that the complaint includes paragraphs 1-4 above, but that defendant did not know plaintiff was about to sit in the chair--he simply reached for an unoccupied chair, and plaintiff, who did not look before she sat down, fell several seconds after defendant took the chair away for his own use. Suppose further that defendant can prove it.

Will this information affect the outcome of defendant's motion?

E. Suppose that the complaint includes paragraphs 1-4 above, but that paragraph 2 is rephrased to say:

2. Plaintiff fall down, go boom! Hurt self bad!

Will the substitution of this paragraph affect the outcome of defendant's 12(b) 6 motion?

PROBLEM SET 4

Refer back to the facts described in PS1. Assume that Plainterrible Grocery Store filed a diversity action in federal district court against PDQ, an independent contractor hired to deliver groceries to Plainterrible customers, for breach of contract (rather than promissory estoppel).

1. PDQ finds a paragraph of Plainterrible's complaint incomprehensible and files a R.12(e) motion. The motion is granted, Plainterrible rephrases the paragraph, and upon reading it, PDQ realizes that the complaint now fails to state a claim. What are PDQ's options? Does R.12(g) pose a problem? Is your answer affected by note 2 in the Board of Harbor Commissioners?

2. PDQ is served with the complaint, ignores it, and after 20 days, a default is entered. A month later, before Plainterrible has moved the court to enter judgment, PDQ files a motion to set the default aside, accompanied by an answer which states a valid defense. On the day that PDQ's motion is filed, Plainterrible's key witness dies. Should the court set the default aside under R.55?

3. Paragraph 8 of the complaint alleges that "Plainterrible was contacted by 20 customers who complained that they had not received timely delivery of their groceries, and Plainterrible immediately notified PDQ of those customer complaints." PDQ received a list of 20 customers from Plainterrible, that Plainterrible represented as having complained, but PDQ has no idea how that list was generated, or whether those customers did indeed have complaints. PDQ answers paragraph 8 of the complaint by saying: "Defendant lacks sufficient information to admit or deny paragraph 8." Are there any problems with that?

4. PDQ's answer states, in its entirety: "You can trust Plaintiff's word about as far as you can trust the quality of the groceries they sell. They lie." How should Plainterrible respond? Would it matter if PDQ rephrased its answer to state that it "denies all allegations in the complaint?" Take paragraph 8, as described in problem 3, into account.

PROBLEM SET 5

A world famous rock star from IN damaged his CA hotel room and injured several hotel guests and employees when he made a molotov cocktail of an empty liquor bottle and set it off in the hall. The hotel considers suit against the rock star for trespass and assault.

1. The hotel discovers that the rock star did not pay his bill when he stayed at the hotel the previous year. May the hotel sue the rock star for both the non-payment and the more recent episode in a single action?
2. Can the hotel join the injured employees as co-plaintiffs in a single suit against the rock star? Should it matter if the hotel secured written agreements from the employees assigning all their rights to recover damages to the hotel?
3. Suppose that the hotel goes forward with the suit and joins the injured employees as co-plaintiffs. One of the employees thinks the hotel was negligent in failing to warn him about the rock star before sending him up to the room. By what procedural device can the employee make his claim against the hotel?
4. The rock star argues that he was assaulted by hotel employees in the incident. By what procedural means can he raise these claims?

PROBLEM SET 6

1. The commercial jet that is supposed to fly Pete from Indianapolis to Los Angeles, crash lands in the Mississippi river. Pete is disappointed, not to mention injured to the tune of \$100,000 in medical bills alone.

a. Pete learns that the pilot had been drunk and that an air-traffic controller in Davenport Iowa, depressed by recent flooding, had directed the pilot into the river to lighten the mood. Assuming that diversity jurisdiction can be established, may Pete sue the pilot, the airline and the air-traffic controller in the same federal court action, and if so, by what procedural device? Must he?

b. If Pete sues only the airline, is there any procedural means by which the airline can bring the air traffic controller into the suit?

c. Pete discovers that his own insurance covers all his injuries, and his carrier compensates Pete completely. The insurance company then prepares to sue the airline and secures Pete's permission to bring the suit in Pete's name. May the insurance company do that, and if so, pursuant to what rule?

d. The airline has a \$5 million liability policy with one of its insurance carriers, and wants to bring the carrier into the litigation. May it do so, and by what procedural means? Is there any way that the carrier can bring all the injured passengers into the litigation?

e. Assuming that Pete sues the airline, the pilot and the air traffic controller, what should the airline do if it has reason to believe that its pilot was sober and that the problem was caused entirely by the air traffic controller?

2. Suppose instead that the airline, which is jointly owned by Mary and Barry, refuses to sell Pete a ticket, and Pete suspects that it is on account of his race. Pete sues Mary under the Civil Rights Act, to enjoin the airline from engaging in racially discriminatory sales practices.

a. By means of what procedural device(s) may Mary add Barry to the litigation?

b. By what means may Pete add Barry to the litigation?

c. By what means may Barry add himself to the litigation?

d. Could a different airline that follows the same sales practices as Mary & Barry's airline add itself to the litigation?

PROBLEM SET 7

1. An African American family purchased a house in a subdivision that was restricted by a joint covenant to whites only. In a suit by subdivision residents to enforce the covenant, the family argued that the covenant was unenforceable. The residents responded that the covenant had been ruled enforceable in an earlier class action filed on behalf of all present and future homeowners against an owner who had leased his house to blacks. The residents argued that since the family was a member of the plaintiff class in that earlier case--being future homeowners--they were bound by the holding in that case and could not challenge it now. Are the residents right: do all present and future subdivision homeowners satisfy the R.23(a) requirements for certification?
2. Same facts as in Holland, except that instead of filing suit on behalf of all current and future detainees or sentenced offenders, the suit is limited to current detainees. Should that affect eligibility for certification under R.23(a)?
3. Same facts as in Holland, except that the plaintiff's representative is a prisoner who is without counsel and who intends to represent the class pro se. Should that affect class certification under R.23(a)?
4. Class certification in a negligence suit for damages is filed on behalf of all persons who have been injured by skateboards against the four major skateboard manufacturers. Should certification be permitted under 23(a)?
5. Same facts as in question 4, except that suit is filed on behalf of all persons injured by a single manufacturer as a result of a design defect with a particular skateboard that causes the wheels to jam without warning. Should certification be permitted under 23(a)? What about 23(b)(3)?

PROBLEM SET 8

Your client went to a restaurant for dinner and was badly injured when the restaurant caught fire. You are suing the restaurant for negligence, and are now at the point of needing to gather additional information. In the problems that follow, there will often be no right or wrong answers, but there may be more or less effective ways to gather the information sought. You may assume that the restaurant is a corporation, and that it is deemed to possess all information known to its employees.

1. Your client remembers seeing a restaurant waiter who witnessed the fire, but doesn't know the waiter's name. How might you find that out?
2. Let's assume that you track the waiter down. You want to learn what he saw after the fire broke out. How do you find out? Would interrogatories likely do the trick?
3. Your client says he had trouble finding the exit after the fire broke out, which contributed to his injury, and suspects that the restaurant did not keep the exit lights lit. How could you find out?
4. Your private investigator tracks down 30 patrons in the restaurant at the time of the fire, who escaped injury, and who have not sued the restaurant. You want to learn some simple information from them about where they were sitting, what they saw, and whether they noticed if the exit lights were out. How do you do that? What about interrogatories? Suppose they were a bus load of terminally ill patients from a cancer ward, who had begun to die before you completed your investigation prior to filing the complaint.
5. It's the restaurant's turn. Suppose that depositions of three patrons yield testimony that the exit lights were not on. The restaurant maintains that the lights were on, and suspects that these patrons' eyesight was impaired by the medication they were taking. How can it find that out? How about a medical exam?

PROBLEM SET 9

A patron slips and falls in the produce section of a grocery store.

1. The Store manager talks with employees who witnessed the accident and prepares a memo summarizing their statements and his impressions of their validity. The patron sues and files a rule 34 request for the manager's memo. Should the request be granted, if:

a. the memo was prepared every week, to update the President of the company on store related events? Would it matter if a company lawyer is among those copied on the weekly memos?

b. the memo was prepared in light of possibility that victim would sue?

1) would it matter if one of the employee witnesses had since quit and moved to Alaska, where she could be reached only by dog sled?

2) would it matter if the statements of the witness now in Alaska were contained in a trial strategy memo prepared by defendant's lawyer?

c. the memo was prepared by the manager for defense counsel in anticipation of a meeting the next day?

2. Suppose plaintiff's rule 34 request sought a copy of a memo the lawyer sent to the store management before the accident, advising it on ways to guard against liability for patron injuries. Discoverable?

3. Suit is filed against the store, and the local paper criticizes the store. Store owner writes the editor, describing the meeting between his lawyer and the stock boys, and quoting a letter he had just received from his lawyer, saying the store had acted responsibly. Can plaintiff obtain discovery of the letter?

4. Shortly after the accident, and before he filed suit or retained counsel, plaintiff was interviewed by the defense lawyer in anticipation of possible litigation. A summary of the interview was typed by the lawyer's secretary and signed by plaintiff. Plaintiff now wants a copy of that statement. Is it discoverable?

PROBLEM SET 10

Plaintiff was struck by a hit and run driver. Plaintiff retained counsel, whose private investigator tracked down a car matching the description offered by plaintiff. Plaintiff sued the owner of the car for negligence, the elements of which are:

- Defendant was driving carelessly
- Defendant's carelessness caused the accident
- The accident caused plaintiff's injury

The complaint alleged:

- Plaintiff was walking his dog at 2:00 p.m. on Saturday morning on September 4, when defendant, drove along side of plaintiff, carelessly swerved from his lane, knocked plaintiff to the ground and drove away.
 - As a result of the collision, plaintiff sustained a broken leg and serious back injury.
-

After three months of discovery, defendant moved for summary judgment. He pointed to his own interrogatory answer that on September 4 at 2:00 p.m., he was at the Indiana-Wisconsin football game, and supplied corroborating affidavits of ten fans who attended the game with him. He further pointed to the deposition testimony of four eye-witnesses who stated that defendant was not the driver of the car that struck plaintiff.

1. Plaintiff opposed the motion, relying on the paragraph of the complaint which alleged that "defendant. . . knocked plaintiff to the ground." Assuming that these are the only arguments the parties make, and no further discovery is undertaken or ordered, should defendant's motion be granted?
2. Assume instead that plaintiff appended to his brief in opposition to defendant's motion, plaintiff's own affidavit, which alleged that it was defendant who struck plaintiff? Suppose plaintiff's earlier deposition testimony had been that he had been struck from behind and had not been able to see who hit him?
3. Assume that the witnesses all identified the driver of the car as a woman, while defendant is a man. In his opposition to defendant's motion, plaintiff points to interrogatory responses from defendant confirming that the make and model of his automobile matched the description offered by the four eyewitnesses to the accident, and argues that the jury might conclude that the witnesses could be mistaken as to the gender of the driver.

PROBLEM SET 11

In this problem set, you may assume throughout that defendant moved for judgment as a matter of law (jmol) prior to the jury verdict.

1. Plaintiff wins jury verdict. Defendant moves for JMOL and a new trial.
 - a. May defendant simultaneously move for JMOL and new trial?
 - b. Suppose that the JMOL is granted, and a new trial is conditionally granted. May the plaintiff appeal now?
 - c. If the court of appeals ultimately reverses the order granting JMOL, is defendant entitled to a new trial?
2. Plaintiff wins jury verdict. Defendant moves for JMOL and a new trial. The motions are denied.
 - a. May the defendant appeal now?
 - b. What should plaintiff do to protect itself in the event that the court of appeals reverses the district court's denial of the JMOL?
3. Plaintiff wins jury verdict. Defendant moves for JMOL and new trial. Court denies JMOL; grants a new trial.
 - a. May defendant now appeal the court's denial of the JMOL?
 - b. May plaintiff now appeal the new trial order?
4. Plaintiff wins jury verdict. Defendant moves for JNOV but not a new trial. Defendant's motion is granted.
 - a. May plaintiff now move for a new trial?
 - b. The plaintiff appeals the JMOL order. Three months later, the court of appeals reverses. May defendant now move the district court for a new trial?
 - c. Would the answer to the preceding question be affected, if the grounds for defendant's new trial motion was newly discovered evidence?