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Civil Procedure—Pleadings—Sufficiency of Notice

William Sugnet

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CIVIL PROCEDURE

Pleadings—Sufficiency Of Notice

*Morgenstern v. Cohon*¹ presented a problem of judicial interpretation of pleadings as to legal sufficiency. As a general rule, litigants are required to plead ultimate facts in support of legal conclusions rather than mere legal conclusions alone.² The main reason for the rule is to give the opposing party advance notice of the precise questions that they must meet at trial.³ The question of whether or not particular pleadings meet the standard of the rule is a very narrow discretionary one. It is up to the courts to determine, from the precise wording of the pleadings, whether they allege legal conclusions only, or contain statements of ultimate fact in support thereof.

Case authority is of little benefit in a discretionary issue of this kind. Although the Civil Practice Act, section 241, requires that a complaint contain a plain and concise statement, without repetition, of the material facts, it is to be read in conjunction with section 275 of the Civil Practice Act which states that, "Pleadings must be liberally construed with a view to substantial justice between the parties."

In this case, claimant had stated that the petitioner agreed to sell his vote as stockholder, for consideration which inured to his sole benefit. The Court of Appeals determined that petitioner's affirmative defense to this pleading clearly contained sufficient factual allegation upon which to base conclusions of illegality. The sale of the vote was the essential fact, in support of the conclusion that the contract was void as opposed to statute.⁴

The Court has here demonstrated the modern trend in pleading that received its initial impetus with the New York Field Code of 1848 and continues in the great majority of American state jurisdictions as well as Federal courts. This trend is to liberate court litigants from the archaic and intricate common law pleading and allow them to plead by notice and proofs at trial. The procedure saves much time and expense for all parties concerned.

Prima Facie Case—Scintilla Of Evidence

The basic elements essential to a negligence action in New York are (1)

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1. *Morgenstern v. Cohon*, 2 N.Y.2d 302, 160 N.Y.S.2d 633 (1957).
 2. N.Y. CIV. PRAC. ACT §241.
 3. *Crane v. Powell*, 139 N.Y. 379, 388, 34 N.E. 911 (1893); *Milbank v. Jones*, 127 N.Y. 370, 376, 28 N.E. 31, 32 (1891).
 4. N.Y. STOCK CORP. LAW §47 provides:
A stockholder shall not sell his vote to any person for any sum of money or anything of value.