THE RELATIONSHIP OF LAW AND EQUITY IN ARKANSAS

I. This material is now divided chronologically: the law to 2000 and the law now.

See pages 896-911 for general principles; read pages 3-4 of the Supplement for specific Arkansas law. Analyze the jurisdictional issues in the following examples.

Smith & Nixon, La Dolce Vita - Law and Equity Merged at Last, 24 Ark. L. Rev. 162 (1970).

Brill, Law and Equity in Arkansas: Will Liles v. Liles Lead Us Out of the Morass?, 1987 Ark. L. Notes 1.

Gitelman, The Separation of Law and Equity and the Arkansas Chancery Courts: Historical Anomalies and Political Realities, 17 U. Ark. Little Rock L. J. 215 (1994).

A. Suit in Chancery Court:

1) Plaintiff sues in equity for an injunction to prevent future trespassing and for damages for past trespasses. § 2-2

2) Defendant breaches a contract to convey Blackacre to plaintiff. Plaintiff sues in equity for specific performance, or for damages for breach of contract. § 2-3

3) Plaintiff sues in equity to prevent defendant from disposing of his assets, and also claims wrongful death damages.

4) Plaintiff sues in equity for a divorce and also seeks damages for an assault and battery caused by her husband. Defendant moves to transfer the assault and battery claim to circuit court. § 2-4

(a) Assume the defendant does not make a motion to transfer. Does the judge have sua sponte power?

5) Plaintiff bank sues in equity to foreclose a mortgage; defendant answers and files a compulsory counterclaim, alleging fraud and lender liability by the bank, seeking compensatory and punitive damages and a jury trial.

(a) Suppose the counterclaim is only permissive?

Read Colclasure, page 902.

B. Suit in Circuit Court:

6) Plaintiff sues in circuit court for breach of contract; defendant raises the defense of an equitable set-off and moves to transfer to equity. Should the circuit judge transfer the entire case, only the equitable defense, or none of it? §§ 2-1, 2-4

7) Plaintiff sues in circuit court for damages for slander; defendant counterclaims for damages for conversion of property, seeks an accounting, and moves to transfer to equity.

8) Plaintiff sues in circuit court on grounds of lender liability and demands a jury. The defendant asserts an equitable setoff as a defense and moves to transfer to equity.

C. In Summary:

9) Plaintiff claims compensatory and punitive damages for intentional interference with a contractual relationship. Plaintiff also wishes an injunction against any future interference. Where should the plaintiff commence a lawsuit? What options are available? What are the advantages and disadvantages of each option?

II. In November 2000 the people of Arkansas approved Amendment 80, which provided for a new judicial article.

See the new version on pages 3-5 in your expanded Supplement. See Watkins, Law and Equity in Arkansas - or Why to Support the Proposed Judicial Article, 53 Ark. L. Rev. 401 (2000).

Now there will be only Circuit Courts, but in individual counties the judges may be sitting in Divisions, as approved by the Supreme Court. See, for example, the arrangement for the 6 judges in the 4th Circuit (Washington and Madison Counties).

What happens now?

Consider the easy examples from above:

1)

2)

3)

7)

But now consider the difficult examples from above:

4) How does the judge handle a case involving both divorce and a claim for assault and battery damages arising out of the divorce?

5) If the plaintiff seeks equitable relief, but the defendant counterclaims for legal relief, will there be a jury trial? Does it depend on whether the counterclaim is compulsory or permissive?

1) The plaintiff seeks either equitable or legal relief for breach of contract. Who determines the facts as to the grounds for breach? Judge or jury?

6 and 8) If the plaintiff seeks monetary damages for breach of contract, can the defendant raise a traditionally equitable defense?

What discretion does the trial judge have? What have the legislature and the General Assembly not yet resolved? What questions remain?

See John J. Watkins, The Right to Trial by Jury in Arkansas after Merger of Law and Equity, 24 U. Ark. Little Rock L.J. 649 2002).

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