ELECTION OF REMEDIES

A. State the election of remedies doctrine in one sentence. Read pages 189-201. (§§ 2-8 to 2-10).

B. Give examples of inconsistent remedies.

C. Do the following examples involve the election of remedies doctrine?

(1) The plaintiff is injured by a defective hammer and sues the defendants on theories of negligence, strict liability, implied warranty and express warranty.

(2) The plaintiff who is injured by a Wal-Mart truck sues Wal-Mart on theories of respondent superior and negligent entrustment.

(3) On behalf of a decedent who was killed in an automobile accident, the executor sues the other driver in Count One alleging that the decedent was a careful driver. In Count Two the executor sues the tavern, alleging that it sold alcoholic beverages to the decedent and knowingly let him go on the highway when he was unable to drive properly.

(4) The plaintiff stockholder sues the corporation, alleging fraud and misuse of corporate assets. In Count One he seeks to rescind his purchase of the stock; in Count Two he asserts a stockholder's derivative suit.

D. How does the plaintiff make an out of court election?

E. How does the plaintiff make an in court election? How can the plaintiff procedurally avoid this doctrine? In which court is the plaintiff likely to sue? What defensive motion is the defendant likely to file?

F. What are the theories or policies behind the doctrine?

G. What are exceptions to the doctrine?

H. Why is the doctrine described as harsh?

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