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Pleading: Failure to Allege a Material Ultimate Fact

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communal life as a whole, and provided that the danger either to such business or to the community in which it operates is serious. No exact limits were provided; the distinction between what can and cannot be regulated remains to this day one of degree; and some measure of control is retained by the judiciary.\textsuperscript{13}

The decision of the principal case fits quite naturally into the predetermined pattern indicated by its forerunners throughout the 'thirties. It is as much a matter of public policy to outlaw the closed shop contract as it is to outlaw the "yellow dog" contract.\textsuperscript{14} This decision puts the precise choice where it should be — with the electorate. Whether it is best to have or not to have such legislation is an economic problem, not a legal one, provided the guideposts of broad scope, serious danger, and appropriateness of remedy are not disregarded.

Although the similar Florida constitutional anti-closed shop provision\textsuperscript{15} has not yet been tested before the United States Supreme Court, the doctrine of the principal case strongly supports its constitutionality.

ROY T. RHODES

PLEADING: FAILURE TO ALLEG A MATERIAL ULTIMATE FACT

Collins v. Selighman & Latz of Jacksonville, Inc.,
38 So.2d 132 (Fla. 1948)

Plaintiff patronized a beauty parlor operated by defendant, and on divers occasions defendant applied a lacquer to plaintiff's hair. Plaintiff brought this action to recover for injuries to her scalp resulting from defendant's negligence in applying the lacquer. Plaintiff's declaration failed to aver positively that the lacquer used upon plaintiff's hair would, if allowed to come into contact with the scalp, have a harmful and injurious effect thereon. The defendant demurred to the declaration, and the circuit court sustained the demurrer with leave to amend. Plaintiff filed an amended declaration but still failed to allege positively this essential element of her cause of action, merely stating "that defendant knew,\textsuperscript{16}

\textsuperscript{12}See note 9 supra.
\textsuperscript{13}McKay v. Retail Auto Salesman's Local, 89 P.2d 426 (Cal. App. 1939).
\textsuperscript{14}FLA. CONST. Decl. of Rights §12.
or by the exercise of reasonable care and diligence ought to have known, that the said lacquer would, if allowed to come into contact with the scalp, have a harmful and injurious effect thereon and would thereby injure and harm the hair by reason of its effect upon the scalp." There was a further allegation of negligent application of the lacquer and resulting injury. Defendant demurred to the amended declaration, and the circuit court sustained the demurrer, rendering judgment for the defendant; whereupon the plaintiff appealed. On the first hearing the Supreme Court affirmed the order, with directions to the circuit judge to allow the plaintiff a reasonable length of time in which to amend her declaration. On rehearing, held, the amended declaration was sufficient. Judgment reversed, Chief Justice Thomas and Justices Sebring and Hobson dissenting.

The plaintiff's declaration is the statement in a logical and legal form of the facts that constitute his cause of action; it is the formal mode of alleging on the record that which is the basis of the action. The plaintiff must recover on the case made by the declaration, as the parties are bound by the issues made in their pleadings. Consequently, a declaration in an action at law should allege every essential fact. Under the Florida view, however, in action in which negligence is the basis of recovery, it is not necessary to set out the facts constituting negligence; an allegation of sufficient acts causing injury, coupled with an allegation that they were negligently done, is sufficient. Nevertheless, before a verdict is rendered, pleadings are construed most strongly against the pleader;