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Attorneys' Malpractice

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Actions and Proceedings Against Attorneys

Degree of skill, care and diligence required of attorneys

AN ATTORNEY is not an insurer of the result of a case in which he is employed, without a special contract to that effect, nor can more than ordinary skill, care and diligence be required of him without such contract; and where an attorney has acted in good faith and with a fair degree of intelligence in the discharge of his duties under the usual implied contract, any error which he may make must be so gross as to render wholly improbable any disagreement among good lawyers as to the manner of the performance of the services in the given case before the attorney can be held responsible.[1]

The undertaking of an attorney is not that he possesses perfect legal knowledge, or the highest degree of skill in relation to the business he undertakes, nor that he will conduct it with the greatest degree of diligence, care and prudence, but that he possesses the ordinary legal knowledge and skill common to members of the profession, and that in the discharge of his duties he will exercise ordinary and reasonable diligence, care and prudence. The failure to do so would be negligence.[2]

An attorney who contracts to prosecute an action in behalf of a client impliedly represents that he possesses the requisite degree of learning, skill and ability necessary to the practice of his profession, and which others similarly situated ordinarily possess; that he will exercise his best judgment in the prosecution of the litigation, and that he will exercise reasonable and ordinary care and diligence in the use of his skill and in the application of his knowledge to his client's cause. When he acts

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1 Babbitt v. Bumpus, 73 Mich. 331, 41 N. W. 417 (1889).

The term "gross negligence," when used in reference to liability of an attorney to his client, means want or absence of reasonable care and skill: Glenn v. Haynes, 191 Va. 574, 66 S. E. 2d 509 (1951).

2 Spangler v. Sellers, 5 F. 882 (C. C., S. D. Ohio, 1881).

in good faith and in the honest belief that his advice and acts are well founded and in the best interest of his client, he is not answerable for a mere error of judgment or mistake in a point of law which has not been settled by the court of last resort in his state, and on which reasonable doubt may be entertained by well informed lawyers.[3]

It is well settled by high courts of England and of this country that every client employing an attorney has a right to the exercise on the part of the attorney of ordinary care and diligence in the execution of the business entrusted to him, and to a fair average degree of professional skill and knowledge; and if the attorney has not as much of these qualities as he ought to possess and which, by holding himself out for employment he impliedly represents himself as possessing, or if, having them, he has neglected to employ them, the law makes him responsible for the loss or damage which has accrued to his client for their deficiency or failure of application.[4]

A lawyer, by engaging, undertakes to conduct the business in the usual way, not for the judgment of the court.[5]

An attorney owes to his client fidelity, secrecy, diligence and skill. He cannot represent conflicting interests or undertake to discharge conflicting duties.[6]

Transactions between attorney and client

The relation of attorney and client is confidential in nature, and any contract entered into between them while such relationship continues, whereby the attorney obtains any advantage over the client, is presumed to have been made by the client under undue influence of the attorney.[7] All transactions between attorney and client are regarded with suspicion and disfavor, are discouraged by the policy of the law, and will be closely scrutinized by the courts, which will lean against the attorney.[8] The

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[3] Hodges v. Carter, 239 No. Car. 517, 80 S. E. 2d 144 (1954).

[4] Kendall v. Rogers, 181 Md. 606, 31 A. 2d 312 (1943).

[5] Gallagher v. Thompson, Wright (Ohio) 466 (1833).

[6] People v. Gerold, 265 Ill. 448, 107 N. E. 165 (1914).

An attorney must exercise the highest degree of good faith in relations with his client, and must make a full disclosure of all information relative to the transaction in which he is retained: Laehn Coal, &c., Inc. v. Koehler, 267 Wis. 297, 64 N. W. 2d 823 (1954).

[7] Plxweve Aircraft Co. v. Greenwood, 141 P. 2d 933 (Calif., 1943).

[8] Rothman v. Wilson, 121 F. 2d 1000 (C. C. A. 9, 1941).

burden of establishing the fairness of such transactions is upon the attorney.[9]

However, prior to the relation of attorney and client, a lawyer may bargain for his services with a prospective client, and deal with him at arms length. This was held to be so although the attorney had previously represented the client in litigation which had successfully terminated.[10]

Summary proceedings against attorneys; disbarment

At common law a summary proceeding, by motion, may be brought against an attorney who wrongfully refuses to turn over papers, documents or money to his client, even though the money was not received as the proceeds of a judgment and there is no case pending before the court.[11] However, where an attorney in good faith claims funds produced by his services rendered to the client, for such services, a summary order should not be rendered. The proper remedy is by an ordinary action at law.[12]

An Ohio statute provides that an attorney receiving money for his client, and refusing or neglecting to pay it when demanded, may be proceeded against in a summary way, on motion.[13]

Disbarment. In Ohio a *proceeding* to remove or suspend an attorney from office is strictly statutory.[14] But there is nothing

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9 Hunt v. Picklesimer, 290 Ky. 573, 162 S. W. 2d 27 (1942).

In clients' suit to set aside instruments purporting to convey realty to their attorney, the attorney had burden to show that he had not overreached clients: Seeley v. Cornell, 90 F. 2d 562 (C. C. A. 5, 1937).

In land owner's action for damages resulting from his attorney's allegedly false representations as to existence of tax lien against the property, plaintiff had burden to prove the alleged fraud; but where an attorney and his client have transactions with each other, or enter into some contract from which the attorney profits, fraud may be inferred, and the attorney has the burden to show that he dealt fairly with his client, but there were no such dealings here: Easton v. Chaffee, 16 Wash. 2d 183, 132 P. 2d 1006 (1943).

10 Boldt v. Baker, 13 Ohio App. 125 (1920).

11 Cotton v. Ashley, 11 Ohio Cir. Ct. Rep. 47 (1895) [followed, Mulholland v. Groot, 24 Ohio Cir. Ct. Rep. (N. S.) 582, 35 C. D. 16 (1904)].

12 Newcomb v. Krueger, 36 Ohio App. 469, 173 N. E. 246 (1930).

There is no question but that a court may, in the exercise of its jurisdiction, compel an attorney appearing before it to pay over or account for moneys, or to deliver papers which *he has received in his official capacity* and wrongfully withholds from his client. The procedure is by petition or motion in a civil action in which he is given an opportunity to answer and defend, and if the attorney in good faith claims funds for services rendered to the client, the latter is not entitled to a summary order: In re Butler, 137 Ohio St. 115, 17 O. O. 440, 28 N. E. 2d 196 (1940).

13 Ohio Rev. Code, § 4705.06.

14 In re Lieberman, 163 Ohio St. 35, 56 O. O. 23, 125 N. E. 2d 328 (1955).

inconsistent in following the mode of *procedure* provided by statute, and at the same time enlarging the statutory *grounds* for disbarment by the exercise of the inherent powers possessed by courts in these matters.[15]

Malpractice actions against attorneys

Considering the immensity of the matters in which trust is reposed in lawyers by clients, business and personal alike, the comparative dearth of malpractice actions against attorneys would seem to testify that the great majority of lawyers maintain a high ethical standard and are not wanting in reasonable diligence in respect to matters entrusted to them.

Those few members of the profession who are derelict in their duty often escape liability on account of the inability of the client to prove damage or proximate cause. By the weight of authority, if a lawyer neglects to prosecute an action, interpose a defense, or properly perfect an appeal, in order to recover against him the client must prove that he had a good cause of action or defense, or that the judgment would have been reversed if the appeal had been perfected. This is undoubtedly sound law, but it casts an almost insuperable burden upon the erstwhile client. As said by one court, in a malpractice action resulting from the failure of an attorney to take an appeal from a judgment against his client:

"It is true that this involves certain difficulties, not the least of which is to try to convince one trial judge that another judge of equal jurisdiction rendered such an erroneous judgment that it would have been reversed on appeal had one been taken." [1] This objection, however, was met by one state court of last resort by reviewing the record of the case, in which the attorney was alleged to have been negligent in failing to settle a bill of exceptions, for the purpose of determining whether or not there was reversible error.[2]

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[15] In re McBride, 164 Ohio St. 119, 58 O. O. 242, 132 N. E. 2d 113 (1956).

The proceeding is not a criminal prosecution: State ex rel. Joseph v. Crossland, 152 Ohio St. 199, 40 O. O. 174, 88 N. E. 2d 289 (1949).

Procuring admission to the bar by fraudulent means is ground for disbarment: State ex rel. Turner v. Albin, 118 Ohio St. 527, 161 N. E. 792 (1928).

[1] Pete v. Henderson, 124 Calif. App. 2d 487, 269 P. 2d 78 (1954). It was held, however, that although it might be difficult to make such proof, that is no ground for denying the right to present the proof, if it can be made, and that it would not be a collateral attack upon the judgment in the former action.

[2] General Accident Fire &c. Corp. v. Cosgrove, 257 Wis. 25, 42 N. W. 2d 155 (1950), where it was said that this requirement "appears to place a fairly

The petition or complaint in an action for malpractice must allege the relation of attorney and client, and pertinent facts which disclose the dereliction of a duty by the attorney, and support the claims of injury; negligence with reference to such facts, of a character to suggest that the injury may have flowed therefrom, and allegations of damage constituting the proximate result of the negligence alleged; and, unless the connection between the successive propositions and elements be apparent from the statement of them, the pleading must inform the court by additional averments how one element flows into another; that is, the *nexus* must be obvious or specially pleaded. Thus, a petition alleging the retaining of an attorney to secure for the plaintiff the appointment as administratrix of the estate of her deceased husband; the death of the husband's brother testate, devising his ancestral property to his mother, who failed to probate the will until after the three-year statute of forfeiture of devise had run; the attorney's knowledge of the will of the brother, and his neglect to inform the plaintiff and the court of the fact of such forfeiture, and failure thereby to secure plaintiff's appointment as administratrix of her husband's estate, and alleging damages as a result thereof, does not state facts sufficient to constitute a cause of action for malpractice.[3]

In an action against an attorney for negligence, the erstwhile client must allege and prove the attorney's employment by the client, his neglect of a reasonable duty, and that such negligence was the proximate cause of loss to the client. Thus, where a declaration alleged that the plaintiffs had been the owners of a farm which they sold to one M, under a deed containing a "covenant of special warranty," which obligated the grantors to protect the grantee against acts impairing the title during the holding of the property by the grantors, but not against such acts by

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(Continued from preceding page)

heavy burden upon the plaintiff in this case, but, as pointed out by the trial court, the law is well established in the courts of this country. This burden plaintiff accepts." The conclusion was, however, that the record in the first action did not disclose reversible error.

[3] Long v. Bowersox, 8 Ohio Nisi Prius Rep. (N. S.) 249, 19 O. D. 494 (1909). It would seem evident that the failure of the attorney to inform the plaintiff and the court of the forfeiture of the devise by the mother of plaintiff's brother-in-law, would in no way result in failure to secure for plaintiff the administration of her husband's estate. Plaintiff might have had a cause of action against her attorney for failure to secure for her part or all of her brother-in-law's property, upon the forfeiture of his mother, assuming that her husband was the heir at law of his brother, which he apparently was, and she might have also had a cause of action against her second lawyer for failure to properly cast her cause of action.

their predecessors in title; that said M later mortgaged the property to the plaintiffs, and then entered into a contract with one C whereby the latter was to purchase the property but refused to perform on account of defects of title caused by acts before plaintiffs acquired the property; that M, plaintiffs' grantee and later mortgagor, "employed defendant attorney" to have the title cleared, and that such attorney told plaintiffs that it was their duty and "legal responsibility" to see that the title to the farm was good in M, their grantee, and that pursuant to such advice they made a substantial reduction in the mortgage debt and cancelled the mortgage; that the attorney in accounting charged plaintiffs a fee of two hundred dollars for his services in having the title cleared, failed to state a cause of action against the attorney, for the reason he had not been employed by the plaintiffs, but was employed by M, although the attorney gave to the plaintiffs incorrect legal advice.[4]

Before a client will be entitled to anything more than nominal damages on account of his attorney negligently permitting a default judgment against the client, the latter must affirmatively show what defense he proposed to make, and that it would have availed. Where general counsel for a client submitted to local counsel an answer to a petition, to which answer a demurrer was sustained, and a default judgment later entered for failure of the local attorney to plead over, it was held that there was no cause of action against the local attorney in behalf of the client. The sustaining of the demurrer to the answer was evidence of the fact that the defense interposed was not valid.[5]

Where an attorney accepted employment to prosecute an action for the plaintiff and the plaintiff recovered judgment in the court of origin, which judgment was reversed by a state district court, and the plaintiff's attorney then prosecuted error to the state supreme court, which proceeding was dismissed for failure of the attorney to file a motion for new trial in the district court, in a malpractice action by the former client against the attorney in a federal court, that court held that there was negligence on the part of the attorney in failing to file the motion for new trial, but that in order to show damage, or proximate cause of damage, it was incumbent upon the former client to establish that if the supreme court of the state had reviewed

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[4] Kendall v. Rogers, 181 Md. 606, 31 A. 2d 312 (1943).

[5] Western &c. Life Ins. Co. v. Selzer, 23 Ohio Cir. Ct. (N. S.) 104, 34 C. D. 146 [affd, without opin., 90 Ohio St. 411, 108 N. E. 1134 (1914)].

the case on the merits it would have reversed the district court. After reviewing a number of decisions in other states to that effect, the federal court held that the attorney was not liable.[6]

Where the plaintiff lost a suit on a fire insurance policy, by reason of failure of his attorney to secure valid service of process on the state insurance commissioner, the attorney was exonerated, on the ground that the law had not been well settled as to the method of such service until the decision of the court of last resort in the principal case in which the negligence was alleged to have been committed.[7]

Where an attorney had instituted an action in a Maryland court for wrongful death under the Maryland statute, and advised his client, the administrator, to reject an offer of settlement, which the client did, and the case was lost for the reason there were no beneficiaries within the provision of the Maryland statute, in an action by such administrator against the attorney alleging expenditures in prosecuting the death action, it was held that there was no basis for recovery in the absence of a showing that the administrator had informed the attorney of the relationship of the alleged beneficiaries, who were stepmother and stepsisters, and without the terms of the statute.[8]

An attorney failed to interpose certain defenses to an action, as he had agreed with his client. Default judgment was rendered against the client. It was held that there was no liability against the attorney, since the defenses proposed by the client were without merit.[9]

Where, in attempting to perfect an appeal, the attorney failed to timely file a statement of facts furnished by the client, which statement was stricken, in a subsequent action for malpractice, the client's failure to allege that had the statement been duly filed the client could or would have obtained a more favorable result upon appeal, rendered the complaint defective for failure to state a cause of action.[10]

An attorney is not liable where his negligence was not the proximate cause of the injury to the client. Client was surety on a note on which a judgment was rendered against him and the makers. Client's attorney took a second trial under the statute,

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[6] Spangler v. Sellers, 5 F. 882 (D. C., Ohio, 1881).

[7] Hodges v. Carter, 239 No. Car. 517, 80 S. E. 2d 144 (1954).

[8] Neosi v. Aiello, 69 A. 2d 57 (Mun. App., D. C., 1949).

[9] Haggerty v. Watson, 302 N. Y. 707, 98 N. E. 2d 586 (1951).

[10] Laux v. Woodworth, 195 Wash. 550, 81 P. 2d 531 (1938).

which necessitated the posting of a bond. The attorney being busy at the time, instructed his client to have the clerk of the court fill out the bond, which was done. The bond, so filled out, recited that it was conditioned for payment of judgment "against all defendants." On second trial judgment was again rendered against the makers of the note, but in favor of client-surety, who was then sued on the bond and paid the judgment erroneously rendered thereon. In an action for malpractice against the attorney, it was held that the legal effect of the bond was that it was conditioned only for payment of any judgment which might be rendered against the former client, who posted the same, as had been held by the state supreme court; that the judgment against the client on the bond was erroneous, and, therefore, that the negligence of the attorney in not supervising the preparation of the bond was not the proximate cause of client's loss in suffering judgment on the bond.[11]

An attorney is not liable to a third party by reason of his dereliction. The owner's agent left notes and a mortgage with an attorney for collection. Later the agent signed an order on the attorney to deliver the proceeds of the notes and mortgage to certain bankers. The attorney signed an acceptance of the order, which the agent wrongfully used for his own benefit, to the detriment of the bankers. In an action by the bankers against the attorney for breach of implied warranty of the agent's authority to use the acceptance for his own credit, the attorney was held not liable.[12]

Where an attorney, without authority, accepted horses in payment and satisfaction of a judgment in favor of his client, the client ratified the act by suing the attorney for the property instead of disaffirming the act and proceeding to have the satisfaction of the judgment vacated.[13]

An attorney who successfully bid on realty at a sheriff's sale in behalf of his client, but failed to make disclosure to the client of certain defects in title before making the bid, was not liable. It was held that proof that the client would have acted otherwise had he known the facts was a prerequisite to his recovery against the attorney.[14]

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11 Harter v. Morris, 18 Ohio St. 492 (1869).

12 Keys v. Follett, 41 Ohio St. 535 (1885).

13 Christy v. Douglas, Wright (Ohio) 485 (1834).

14 Laehn Coal &c. Inc. v. Koehler, 267 Wis. 297, 64 N. W. 2d 823 (1954).

A former client, seeking to recover from an attorney for negligence in failing to perform a specified act, must plead and prove that if the attorney had performed the act it would have resulted beneficially to the client. Demurrer sustained to complaint which alleged that the attorney failed to file a petition for his client's discharge in bankruptcy, but which failed to allege that if the petition had been filed the client would have been entitled to the discharge. In behalf of the former client it was argued that the granting of discharge in bankruptcy on the filing of a petition therefor is mandatory, unless the client has committed certain prohibited acts, which would be an affirmative defense on the part of the attorney in the malpractice action. The court held that, to negative these prohibited acts is an essential part of the cause of action for malpractice, which must be alleged in the complaint.[15]

An action in which negligence of the attorney was alleged was against two physicians, for damages for signing the certificate on which the plaintiff was committed to a state hospital. Verdict was rendered for the physicians. In a later action for malpractice against the attorney, the former client asserted three acts of negligence: (1) failure to make the state's attorney a party defendant in the action against the physicians; (2) failure to offer in evidence in that case copies of certain correspondence of client; and (3) failure to call all of the client's witnesses. The court held that the client, being present at the trial against the physicians, knew that the state's attorney was not a party defendant, and that the record failed to show the nature of the claimed cause of action against him; that not only was there a failure to show wherein the copies of the correspondence would have been beneficial to the client's case, but such copies, which were in the record, would have been detrimental to her if offered and received in evidence; and, as to failure to call all of her witnesses, that she did not testify in the malpractice suit against the attorney as to what witnesses were not called, or what their testimony would have established had they been called. Some eighteen witnesses testified for her in the suit against the physicians. The action against the attorney was also barred by the three-year statute of limitations.[16]

An attorney was sued by his former client for the return of the compensation paid him by the client, and the value of certain

[15] Feldesman v. McGovern, 44 Calif. App. 2d 566, 112 P. 2d 645 (1941).

[16] Case v. Ricketts, 41 A. 2d 304 (Mun. App., D. C., 1945).

bonds involved, for failure to argue and brief as agreed a petition for a writ of certiorari presented in behalf of the client to the Supreme Court of the United States in an action to recover against a national bank on an alleged agreement to repurchase the bonds. Judgment in favor of the attorney was affirmed, for failure of the complaint to show that the plaintiff would have recovered against the bank had the case been argued and briefed as agreed.[17]

A petition for malpractice against attorneys alleged that, after the end of litigation to collect two notes for the plaintiff, resulting in the plaintiff securing a life interest in certain realty, subject to a prior life estate, the defendants, as attorneys, continued to represent the plaintiff; that they misrepresented and concealed facts as to the value of such life estate, and wrongfully induced her to sell the same for $2700, which could have been sold for $11,200. The complaint was subject to demurrer for failure to state a cause of action, in that it did not show any monetary damage resulted to the plaintiff, there being no allegation that at the time of sale of the life interest there was any one, other than the purchasing corporation, who was ready, willing and able to buy such interest for any sum, or who had indicated any desire to buy it.[18] The petition did allege, however, that the attorneys knew that the life interest could have been sold for the sum alleged, and that within a month thereafter the purchaser sold it for such sum, and that the attorneys, in effect, fraudulently connived with the purchaser, to their profit.

A petition against an attorney for failure to prosecute an action must state facts showing that the client had a good cause of action to be prosecuted by the attorney. An allegation of wrongful failure to prosecute an action in behalf of the mother for the wrongful death of her minor son, was held to be insufficient, without an allegation that the son had no wife or children entitled by the wrongful death statute to first institute the action, or a father entitled by such statute to institute a joint action with the mother.[19]

During the trial of a stockholders' derivative action against an officer and director of the corporation and others, wherein the first cause of action sought to determine the validity and effect of an agency agreement between the corporation and its

[17] Kimen v. Ettelson, 303 Ill. App. 230, 24 N. E. 2d 871 (1940).

[18] Clary v. McRae, 60 Ga. App. 2d 419, 18 S. E. 2d 70 (1941).

[19] Johnson v. Haskins, 119 S. W. 2d 235 (Mo., 1938).

said officer and director, and, by the second cause of action, to enjoin the execution of a proposed agreement to be made by the corporation with another corporation for the production of television, radio and motion picture shows, at the close of the plaintiffs' case, on motion of the attorney for the officer-director, the first cause of action was dismissed; but the trial judge indicated his belief that the execution of the contract in question should be enjoined, for the reason that the defendant officer "seeks in that contract an advantage for himself that an honorable man would not seek." The following day the attorney for the officer-defendant informed the court that, pursuant to his client's instructions, the contract would be withdrawn and would not be executed. The second cause of action was thereupon dismissed as academic. In a later action by the officer against his attorney for malpractice, it was alleged that the attorney was negligent in the stockholders' action in failing to present witnesses who would have testified that such a contract was customary in the industry. In affirming the judgment dismissing the complaint against the attorney, the Special Term stated that "it is evident that such testimony would not have affected [the trial judge's] reactions to the contract between said corporation and the plaintiff here, a director of said corporation." Judgment affirmed by the Court of Appeals, without opinion.[20]

Not all malpractice actions, however, result favorably to the attorney involved.

It was said that an attorney is not bound to undertake to render services for another without compensation, and if he voluntarily undertakes to do so, he is liable for the consequences of his negligence, and cannot plead lack of consideration for the services, as a defense. Where a client's jewelry was delivered to her attorney for safe keeping, and he placed it in his safe at his residence, where it was stolen, in an action in detinue by the client against the attorney, upon the client establishing title and right to possession of the jewelry, and showing delivery thereof to the attorney, and failure of the attorney to redeliver it upon demand, a prima facie case for recovery was made, and the burden shifted to the attorney to show that non-delivery was not due to failure to use reasonable care. Question for the jury.[21]

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[20] Storer v. Miller, 2 N. Y. 2d 817 (1957).

[21] Glenn v. Haynes, 192 Va. 574, 66 S. E. 2d 509 (1951).

In an action against a national corporation for maintaining a nuisance, causing great damage to near-by farms, attorneys represented to their clients that other clients "similarly situated" would pay part of the costs of litigation. This was not done. After the recovery of $60,000 for the clients, and after claims of others "similarly situated" were settled for $140,000, the attorneys sued their clients who maintained the litigation, for the balance of the costs of litigation. The clients counterclaimed for the amount of expenses which they had paid, alleging that the attorneys were without authority to represent that others "similarly situated" would pay part of the expense. Judgment against the attorneys for about $12,000 affirmed.[22]

A complaint against attorneys, alleging that they represented the plaintiff in presenting his application to the patent office; that the attorneys gave to the plaintiff incorrect legal advice, and failed to give him full and accurate information; that they neglected to make all of the "claims" available to his invention, and that they did these things fraudulently and to benefit competitors of the plaintiff, as the result of which he suffered large money damages by being compelled to pay attorney fees to others, and because persons other than the plaintiff in this and foreign countries were enabled, without license from plaintiff, to use parts or features of his invention, stated a cause of action for negligence, breach of implied contract and constructive fraud.[23]

A client held a mortgage for $16,000, which was "tainted with usury." On advice of counsel, the mortgage was extended, and an additional $14,000 was advanced by the client, for which a new mortgage was executed. Both mortgages, amounting to $30,000, were ordered cancelled on foreclosure, on account of usury. A case of malpractice against the attorneys was made for the jury.[24]

The measure of damages suffered by a client purchasing realty, resulting from breach of contract of the attorney to examine title, would generally include the full amount of the purchase price paid by the client, and interest within the discretion of the jury, whether the title was conveyed to the purchaser or to his nominee. The liability, however, is founded in contract,

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[22] Schafer v. Fraser, 290 P. 2d 190 (Ore., 1955).

[23] Dulberg v. Mock, 1 N. Y. 2d 54, 133 N. E. 2d 695 (1956).

[24] Werle v. Rumsey, 278 N. Y. 186, 15 N. E. 2d 572 (1938).

and does not generally extend beyond the person by whom the attorney is employed.[25]

A statement of claim against an attorney, which alleged that the plaintiff engaged the attorney to file an answer to a petition to show cause why an attachment should not issue against the plaintiff, to represent the plaintiff at the hearing on the petition to show cause, and to file a petition to reinstate a petition to open a final decree in equity obtained by the plaintiff's wife against him, and, if such measures failed, to file for the client a petition in insolvency, for which the attorney accepted a retainer, but failed to render any of such services, resulting in the plaintiff being imprisoned, stated a cause of action.[26]

Statute of limitations

In Ohio the statute of limitations for malpractice is one year, which is applied to actions for malpractice against attorneys,[1] and the cause of action accrues at the date of the act or neglect complained of.[2] In some states different statutes are applied, depending on whether or not the action is founded on negligence or breach of contract, or on some other theory.[3]

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[25] Wlodarek v. Thrift, 178 Md. 453, 13 A. 2d 774 (1940).

[26] Lichow v. Sowers, 334 Pa. 353, 6 A. 2d 285 (1939).

This case is not in accord with the weight of authority to the effect that a showing must be made that the acts neglected would have been successful, if they had been performed.

[1] Long v. Bowersox, 8 Ohio Nisi Prius (N. S.) 249, 19 O. D. 494 (1909).

[2] Galloway v. Hood, 69 Ohio App. 278, 24 O. O. 66, 43 N. E. 2d 631 (1941).

[3] Cf. Glens Falls Ins. Co. v. Reynolds, 3 App. Div. 2d 686 (N. Y.); 159 N. Y. S. 2d 95 (1957); and Bland v. Smith, 197 Tenn. 683, 277 S. W. 2d 377, 49 A. L. R. 2d 1212 (1955).

Where an attorney collects money for his client, and uses no fraud or falsehood to him in regard to its receipt, the six-year statute of limitations applies, and begins to run from the time of its collection: Douglas v. Corry, 46 Ohio St. 349, 21 N. E. 440 (1889).