

Class on Spaulding v. Zimmerman
University of Sydney, September 5, 2006

Introduction

- A. NMC
Visiting USC
Areas: PR and Contract law
Thanks to Professor Jordan for opportunity to teach this hour of his course

- B. Focus on discussion famous US case of Spaulding v. Zimmerman

FACTS:

Accident between 2 vehicles in 1956
Driver 1 – Zimmerman (19)
Driver 2 – Lederman (15) driving under father’s farm permit
Death of two passengers, one in each car
David Spaulding (20) seriously injured
Spaulding father, as natural guardian, brought suit against two drivers
Represented by young attorney named Roberts
Zimmerman’s insurance company retained an experienced lawyer, Arveson
3 medical experts for plaintiff examined Spaulding, but did not discover that he suffered from a life-threatening aneurysm of the aorta
Doctor retained by defense, Dr. Hannah, discovered the aneurysm and reported it to Arveson about a week before the case was scheduled to go to trial.
Arveson did not tell Spaulding’s lawyer, Zimmerman, or the carrier about the report although he did inform the lawyer representing Lederman
Roberts never requested a copy of the report, although he was entitled to receive a copy on request.
Parties negotiated and agreed to settlement of \$6500.
Arveson did not make any representations to Roberts during negotiations about the extent of Spaulding’s injuries.
Because Spaulding was a minor (at that time 21), Roberts filed a petition with the court to obtain approval. Included 3 doctors. No mention of Hannah’s report.
Court approved.
About 18 months later Spaulding was required to take a physical by Army Reserve. Dr. Cain, his physician, and one of three doctors, then discovered the aneurysm. Spaulding underwent surgery to repair the aneurysm. He suffered a permanent speech loss, probably as a result of the procedure.

I. The Duties

Professor Jordan in an early class indicated that one aspect of the course would deal with “the duties,” lawyer’s obligations to client, to court, to third parties, and to other lawyers.

Spaulding deals with a number of those duties. On question sheet I have given you references to both Del Pont’s discussion and Law Society Rules.

Duties involved:

1. Confidentiality and exceptions
2. Candour to court
3. Duty to opponent
4. Duty to client, particularly the duty to counsel the client
5. Termination of retainer
6. Conflicts of interest

II. Question 2. If you had been Arveson and received Hannah’s report, what would you have done?

Q: What duty?

Counsel client. A.17, Dal Pont, 4.05,, page 71, line 7. “To this end . . . “

Q: Whom would you counsel?

Q: Who is client?

Both. Dal Pont 7.85. Same in US

Q: What are implications of two clients?
Counsel separately

Q: Suppose Zimmerman says disclose and Insurer says no. 9.2(b), Dal Pont 7.85 (last sentence)

Q: How would you counsel?

Q: What does it mean? Options, advantages and disadvantages.

Q: Morality. ABA Model Rule 2.1.

Counselor

Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other

considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Q: Threaten to terminate retainer unless disclosed?
5.1.3.
Dal Pont 63-64 (examples of just cause).

III. Question 3. Suppose both instructed you not to disclose.

Q: What duty or duties does it involve?
Termination
Confidentiality
Focus on confidentiality

Q: Rule 2 governs confidentiality, can or must you disclose under rule?
3 situations.

Q: How to determine if law requires? What law?
Statute. Dal Pont 21.105, Trade Practices Act. Liability for misleading or deceptive conduct.

Q: 2.1.3 – to avoid probable commission or concealment of a felony.
NA here.

Conclusion.

US rules.
Many years strict confidentiality
2002 amended. Rule 1.6(b)(1)

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

Q: What would you do and why?

IV. Question 4. Roberts didn't ask for copy of Hannah's report, but suppose during negotiations he had said ...

Q: What duty or duties?

A. 51-53.

Cannot make false statement.

Must correct previously made false statement as soon as become aware of falsity.

No violation simply by failing to correct an error.

Q: How would you respond?

“Don’t recall anything significant”

“You’re entitled to a copy. If you want one, send me a letter and I’ll forward you a copy. If you’re not ready to proceed, I guess we’ll have to adjourn negotiations for now. I was hoping we could get this concluded today.”

“Your question reminds me of a story that I heard . . . “

“A lawyer or law professor, I can’t remember which, once said never respond to a question like that. You’ll get yourself in trouble.”

V. Question 5, candour to court.

Q: Petition referred to 3 medical reports but didn’t mention Hannah. Did Arveson violate duty of candour to court by not revealing Dr. Hannah’s report?

Q: Consider following sections and discuss with neighbor. What conclusion?

A. 21-23

A 31, A31A

What about the *Vernon* case cited by Dal Pont on page 385-386.

Q: Any difference if joint petition rather than just by Roberts?

-- Duty to candour only applicable here because minor petition. If adult no need to seek court approval, at least in US.

VI. Conclusion

Enjoying being with you and analyzing case under your rules of professional responsibility. Wish you best in you law school and practice careers.