

Final Examination
Civil Procedure II Sections LS2 & LS3
Professor David B. Oppenheimer
Spring 2008 Exam

1. You have two (2) hours to complete this exam.
2. This is a closed book exam.
3. This exam consists of two parts.

Part I consists of 25 multiple choice questions. Each multiple choice question is worth 1 point. Please mark your answers to the multiple choice questions on the separate "ParSCORE TEST FORM" using pen or pencil, following the instructions on that form. If you change your answer, completely erase the wrong answer and mark the correct answer. A machine will score the exam, and any ambiguities will be counted as a wrong answer.

Part II consists of one essay question. The essay question is worth 50 points. These will be added to the points earned on the mid term and the multiple choice to produce a raw score, upon which the grade will be based. If using blue books, please write your responses in the blue books provided, writing clearly, using only one side of each sheet of paper, and on every other line to permit comments.

4. Write your exam number on your exam envelope. Put your correct class section and student exam number on the top of this page, each page of questions, each blue book, and the "ParSCORE TEST FORM." Do not use your name, student ID number, or Social Security number on any exam materials.
5. At the conclusion of the exam, return all test materials, including blue books, "ParSCORE TEST FORM" answer sheet, scratch paper, and this exam packet to the envelope; submit it to the proctor. Do not seal the envelope.
6. Students who do not return all exam materials at the end of the exam may receive a grade of "F."

Exam number _____

Good luck!

Part II Essay Question Jones v. Clinton II

In September of 2010 you began work as a judicial clerk for a United States District Court judge.

A few days after you began work, a new case was filed with the court and assigned to your judge. The plaintiff, Mr. Paul Jones, was a former White House intern. He was suing President Hillary Clinton. The key averment of his complaint states:

"On April 1, 2010 PLAINTIFF PAUL JONES was working in the West Wing of the White House with a group of 6-10 other interns when DEFENDANT HILLARY CLINTON approached the group, singled out PLAINTIFF PAUL JONES, and stated "You look terrible today Paul. Your tie is stained. Your socks don't match. Your hair is unkempt. Your nose ring clashes with your erring. You'll never amount to anything if you don't take more pride in your appearance." DEFENDANT HILLARY CLINTON'S statement caused PLAINTIFF PAUL JONES to suffer humiliation and distress."

Time passed. In November, President Clinton filed a motion to dismiss the Jones complaint under FRCP Rule 12(b)(6), arguing that Jones failed to allege that his emotional distress was severe. Your judge denied the motion, ruling from the bench that the severity may be inferred from the averment.

In January 2011, Clinton filed a motion to compel an answer to the following interrogatory: "Provide the name and address of all persons whom you allege have witnessed your alleged severe emotional distress resulting from Defendant's alleged conduct." Jones made a timely objection, stating: "Objection. The names of said witnesses are under the control and within the mental knowledge of Plaintiff's counsel, and are thus immune from discovery under the Work Product Rule." Your judge granted the motion, ordering Mr. Jones to answer.

In June 2011, President Clinton moved for summary judgment. She argued that the only evidence proffered by Jones that he suffered severe emotional distress was his own deposition testimony, in which he testified: "I was crushed, utterly humiliated, too embarrassed to go out in public for like, days. I just went home and cried. And my so-called friends all laughed at me. It was hell. It was at least a month before I felt good about myself again." Clinton argued that this testimony is insufficient to establish severe emotional distress, which is defined as follows: "Severe emotional distress is emotional distress of such substantial quantity or enduring quality that no reasonable person in a civilized society should be expected to endure it." Jones argued that Clinton could not

simply impeach his testimony; she was required to come forward with evidence that he had not suffered severe emotional distress. Your judge agreed, and denied the motion.

In December 2012 the case went to trial. To your judge's surprise, Jones won, and was awarded \$50,000 by the jury. President Clinton moved for JAAMOL and, alternatively, for a new trial. The judge denied the motions, confiding in you "I really had no choice. I think it's inexplicable. I don't see how the jury could rule as it did. I completely disagree. But my hands are tied. There is substantial evidence in support of the verdict, and that's all the law requires."

On March 31, 2012 Jones filed another civil action in your court against President Clinton, alleging that the April 1, 2010 verbal assault by President Clinton was defamatory, and seeking damages. President Clinton filed a motion to dismiss under FRCP Rule 12(b)(6), asserting that the complaint is barred by res judicata. Your judge denied the motion, ruling that since defamation is a different cause of action, res judicata does not apply.

Your clerkship is coming to an end. Your judge has asked you to prepare a memo, candidly evaluating whether she ruled correctly in:

1. Denying the first motion to dismiss;
2. Granting the motion to compel;
3. Denying the motion for summary judgment;
4. Denying the motion for new trial; and
5. Denying the second motion to dismiss.