1)

Introduction

For the following reasons, your honor should have ruled as following:

Motion to Dismiss: Deny

Motion to Compel: Grant

Motion for Summary Judgment (MSJ): Grant

Motion for New Trial: Grant

Motion to Dismiss in the 2d Action: Grant

Motion to Dismiss

Your honor ruled correctly on Clinton (D's) 12(b)(6) motion for the first claim. 12(b)(6) should only be granted when the plantiff (P) has failed to state a claim upon which relief can be granted. Under Rule 8 of the Federal Rules of Civil Procedure (FRCP), P is only required to state his claim in a short and plain statement explaining the reasons why he's entitled to relief. Unlike code pleading, the FRCP rules are used to put the D on notice. The exceptions to this general rule is if the case involves fraud, securities, or special damages. Because none of those exceptions apply here, the general rule should be followed, and a short and plain statement claiming why P's entitled to relief should be sufficient. Here, P's claim does not specifically state his cause of action. P does not clearly state that he's entitled to relief b/c of Intentional Infliction of Emotional Distress (IIED). However, as you ruled, it can be inferred from P's statements. P's claim states that he suffered great humiliation and distress. Moreover, a 12(b)(6) generally is only granted if it is highly unlikely that a plaintiff will be able to prove their claim. Judges usually allow the case to go forward to at least the MSJ stage to see if sufficient

evidence will be presented. Therefore, your honor has ruled correctly on denying D's 12(b)(6).

Motion to Compel

Your honor has also ruled correctly on D's Motion to Compel. A motion to compel is used during Discovery to order a party to provide information to the moving party. Discovery is the phase in litigation where most of the work by the attorney's are done. During this phase, the attorney's work in gathering info relevant to either prove and establish their case or to disprove the other's case. At the outset of the Disovery, both parties are to give automatically disclose the names and info of potential witnesses, docs, and other tangible things they will be using to support their case. Although the names that D is moving P to compel is not part of P's case, and thus not part of the initial disclosures, these names are key in the decision and outcome of this case. These names and their testimony can be a big part of D's case in trying to disprove P's claim. P has misused the Work Product rule and thus your honor has ruled correctly. Work product refers to an immunity in order to protect the thought processes of the other party's attorneys. Such things as witness interviews and witness statements are protected. Moreover witness interviews are absolutely privileged but witness statements are conditinoally privileged. The witness statements may only be turned over to the other side under extenuating circumstances such as the witness dying. Here, none of those exceptions apply. D is moving P to compel merely the names and addresses of the those who were allegedly present at the time of the injury. D is not asking for the statements they have made nor the interviews (if there were any) of them. This information should be given and your honor ruled correctly in compelling P to produce this info.

Motion for Summary Judgment

I believe that your honor has ruled incorrectly in denying D's MSJ. At the close of discovery, a MSJ should be granted if P has not produced substantial evidence to support an element in their case. According to Addickes, the moving party not only had show that the plaintiff was missing something from their case, but had to produce affirmative evidence in showing this. However, Addickes was overturned by Celotex. In Celotex, the US Supreme Court decided that the moving party need not produce affirmative evidence, but merely show that the plaintiff's case is missing substantial evidence in proving an element. Your honor has denied D's motion basing your decision on the rule set forth by Addickes. However, since this rule is overturned and now Celotex is controlling, I believe that the MSJ was wrongly denied.

There may be an argument, however, that the evidence is still substantial enough to go to a jury. P's claim is for IIED. P claims that he was too humiliated and embarrased to be out in public for days. P claimed that all his friends laughed at him and it was like hell. Moreover, he P states that it took a month before he felt good again. Even if all these facts are taken as true and seen in the light most favorable to P, as is the standard for MSJ, I do not believe that P actually did suffer emotional distress. The rule for IIED states that "[it is distress] of such substantial quantity ... that no reasonable person ... should be expected to endure it." His testimony appears to show that he did not suffer in such substantial quantity as no reasonable person should have to. P's friends laughed at him and he was embarrassed to leave the house for a few days, but this is nothing "extreme" or "severe" in my opinion. For the above reasons, I believe that your honor denied D's MSJ incorrectly.

Motion for a New Trial

I believe that your honor has ruled incorrectly for D's motion for a new trial. For a motion for a new trial, trial court judges are allowed to weigh the evidence before them to decide not only if there is substantial evidence in support of the plaintiff's claim, but if the clear weight of the evidence supports their claim. This is a different standard than a MSJ or a Judgment as a Matter of Law (JML). There, a trial court judge is not allowed to weigh the evidence and there only needs to be substantial evidence in support of the plaintiff's claim. Your honor stated that you disagree with the verdict and that it is inexplicable. Moreover, you state that your hands are tied b/c there is substantial evidence to support the verdict. A judge is not allowed to grant a new trial solely on the grounds of their disagreement with the jury. However, if the judge finds that the clear weight of the evidence is against the verdict, a new trial should be granted. In this case, I believe that the clear weight of the evidence is against P. P's only evidence in support for his claim is his own testimony. I do not believe that a reasonable jury could find a verdict for P on that evidence alone. If there was more evidence that P produced, the clear weight would not be against him. Therefore, although you believe that there is substantial evidence in support of P's claim, there is not the clear weight of evidence on P's side and I believe that your honor has ruled incorrectly in this matter.

Motion to Dismiss in the 2d Action

I believe that your honor has ruled incorrectly in the D's 12(b)(6) for the 2d action. Here, the claim is barred by res judicata. Res Judicata, or "the things is decided", is a dispositive motion, and a an affirmative defense that needs to be filed in the first responsive pleading. D has correctly done so here. Moreover, there are 3 requirements for Res Judicata: (1) There is a valid final judgment on the merits; (2) the party's are the same or are in privity; and (3) the claim

should've been litigated in the first action. Here, there is a valid final judgment on the merits. The first judgment was the jury verdict in favor of P for $50k. Moreover, the second element is also met b/c the parties here are identical to those in the first claim. The question of whether this action is barred turns on wehther this claim should've been brought in the first action. All claims must be brought in the action or else they are waived. To know wehther or not the claim should be brought, the test is whether the claim or transaction stems from the same transaction or occurence. If the second claim is of the same transaction or occurence then it is barred from being brought again. The theory behind this is for judicial economy and efficiency. Moreover, it is stated that with one injury there is but one claim. Here, P has had his "bite at the apple." He brought his first suit on IIED and won. All other claims and counter claims that stem from teh same transaction or occurrence must have been brought or else they are barred. P's second claim is now defamation. This claim arises out of the same occurrence as the IIED and needed to be brought int he first action. Because it was not, P's claim merges with this one and P is barred from bringing a second claim. P should not be allowed to litigate piece meal and separate his claim. The thing has been decided and thus I believe that your honor ruled incorrectly in denying D's 12(b)(6).

Grading sheet – Civil Procedure II – Final Exam – Spring 2008 Exam No. ____________

1. Denying the first 12(b)(6) motion to dismiss:
Rule: Under the FRCP, a complaint must provide notice of a claim recognized by law. ✓
Issue: Can severity be inferred from the averment? ✓
Apply: Liberal notice pleading rules. ✓
Code pleading distinguished. ✓
Fair to infer when not pled? ✓
Require more when D is sitting President? – see Jones v. Clinton I.

9

2. Granting the motion to compel: ✓
Rule: Work product immune from discovery, but underlying facts are not. pls
Issue: Are the witness names work product? ✓
Apply: Would disclosure reveal the lawyer's thought processes? ✓
Importance of distinguishing the lawyers' thoughts from the underlying information. ✓

8

3. Denying the motion for summary judgment ✓
Rule: If P's evidence reveals no material issue, D is entitled to judgment. ✓
Issue: Does D need to provide affirmative evidence? ✓
Apply: Under Addicks, yes; but under Celotex, no. ✓
If P's testimony does not reveal substantial evidence
which would lawfully permit a verdict, then D is entitled to SJ. ✓

9

4. Denying the motion for new trial: ✓
Rule: If verdict is against the great weight of the evidence, judge should grant new trial. ✓
Issue: Did judge apply correct test? ✓
Apply: Judge applied JAAMOL test (JNOV), not new trial. pls
Even under JNOV substantial evidence test, judge may have erred. ✓ (above)
Under new trial test, judge erred – should have ordered new trial. ✓

8

5. Denying the second 12(b)(6) motion to dismiss: ✓
Rule: P may not split his cause of action ✓
Issue: Is defamation separate claim from infliction of distress under claim preclusion? ✓
Apply: Modern (federal) test uses transaction test. ✓
Both legal theories derived from same transaction; thus one claim. ✓
But bonus: discernable from face of complaint, or was SJ needed?

9

Total for final essay: 43

Excellent.

See me about TA position.