

ADVANCED TORT LAW: DIGNITARY TORTS

Prof. Rob Lefflar

SPRING 2005 FINAL EXAMINATION

INSTRUCTIONS:

1. The exam is two hours long. You will have plenty to write in those 120 minutes, so use your time well.

2. The exam has three parts. Answers to each part must begin on a separate page. The suggested time for each part is as follows:

Part I (short answer questions): 45 minutes

Part II (essay question): 45 minutes

Part III (essay question): 30 minutes.

Grading will be weighted roughly in accordance with these suggested times: 3/3/2. I would recommend that you take a quick look at Part III before beginning to write the exam.

3. You may have with you a course outline which you have had a substantial part in preparing. You may not have access to the casebook. You may not make or cause to be made any copy of this exam.

4. You must turn in these questions together with your exam answers. Please write your exam number at the top right of this page now.

PART I: SHORT ANSWER QUESTIONS (45 minutes)

These questions are aimed at testing your detailed understanding of course concepts and significant cases. Keep your answers short and to the point.

1. Explain these technical terms of defamation law:
 - a. Colloquium
 - b. Inducement
 - c. Innuendo
 - d. Libel per quod
2. Explain the meaning(s) and significance(s) of the word “malice” as it applies to the law of dignitary torts. Give examples to illustrate your explanation(s).
3.
 - a. On what grounds did Judge Wright rule in favor of President Clinton in Paula Jones’s lawsuit against him?
 - b. On which of those grounds was President Clinton most vulnerable if the case had been appealed? Why?
4. Under what circumstances (if any) may an employer be held vicariously liable for a defamatory statement made by an employee about another employee? Are any constitutional limits applicable?

II. ESSAY QUESTION (45 minutes)

What follows is the Pennsylvania Supreme Court's description, slightly edited, of the facts and procedural posture of Norton v. Glenn, 860 A.2d 48 (Penn. 2004), cert. denied, 125 S. Ct. 1700 (March 25, 2005). Assume the case arose in Arkansas rather than Pennsylvania, and you are law clerk to the Arkansas Supreme Court justice assigned to decide the appeal. Write a draft of the opinion, skipping the facts and focusing on the legal and policy essence rather than the jargon.

These matters arise out of an article written by reporter Tom Kennedy that appeared in the April 20, 1995 edition of the *Chester County Daily Local*. The article, which was entitled "Slurs, Insults Drag Town into Controversy," detailed heated exchanges that occurred among members of the Parkersburg Borough Council. The article reported that these exchanges occurred both inside and outside of the Council chamber. At issue are comments made by William Glenn, a member of the Council, regarding Council President James Norton and Borough Mayor Alan Wolfe.

The article stated that Glenn had claimed in a Council meeting that Norton and Wolfe were homosexuals and that Glenn had observed Norton involved in a homosexual act in Norton's house. The article also reported that Glenn had issued a written statement to the local media just before the Council meeting strongly implying that Glenn considered Norton and Wolfe to be "queers and child molesters." The article related that Glenn had declared that he had a duty to make the public aware of this information as Norton and Wolfe had "access to children." Finally, according to the article, Glenn asserted in an interview with Kennedy that Norton had made homosexual advances toward Glenn which escalated to Norton grabbing Glenn's penis, apparently without Glenn's consent.

The article noted that when informed of Glenn's claims, Norton responded, "If Mr. Glenn has made comments as bizarre as that, then I feel very sad for him, and I hope he can get the help he needs." Wolfe and Norton filed separate actions, each raising defamation and false light claims.

They named as defendants Kennedy, the *Daily Local*, and the Troy Publishing Company, which published the *Daily Local*; these defendants shall collectively be referred to as the "Media Defendants." Wolfe and Norton also filed suit against Glenn. Ultimately, these actions were consolidated before the trial court.

The Media Defendants and Glenn filed motions for summary judgment. In an opinion granting relief in part and denying relief in part, the trial court determined that the Media Defendants were entitled to the protection of a privilege known as the neutral reportage privilege. The trial court reasoned that this privilege was nothing more than the long-recognized fair report privilege, a privilege which grants immunity from defamation suits to media entities which accurately report the official proceedings of government. The trial court opined that pursuant to this privilege, "the subjective awareness of the publisher, of the truth or falsity of the statement, is irrelevant." The trial court explicitly stated that its "holding eliminates the necessity of a determination of actual malice as to the Media Defendants."

At trial, pursuant to its earlier rulings that evidence of actual malice is irrelevant in a neutral reportage matter, the trial court precluded Norton and Wolfe from introducing evidence regarding whether the Media Defendants acted with actual malice.

Via special interrogatories, the jury found that Glenn had made the statements attributed to him in the article and had made them with actual malice, and that the statements placed Norton and Wolfe in a false light highly offensive to a reasonable person. Accordingly, the jury held Glenn liable for defamation and false light. As against Glenn, it awarded Norton \$10,000 in compensatory damages and \$7,500 in punitive damages; it granted an identical award to Wolfe. Glenn did not appeal.

Pursuant to another set of special interrogatories, the jury determined that the Media Defendants were not liable. Specifically, the jury found that the article accurately conveyed the gist of the statements Glenn made and did not imply that the Media Defendants adopted or concurred in those statements. Thus, pursuant to the trial court's instruction regarding the neutral reportage privilege, the jury found the Media Defendants not liable in defamation or false light.

On appeal by Norton and Wolfe, the Court of Appeals reversed. The Court of Appeals found that there was no constitutional or statutory basis for the neutral reportage privilege. Thus, it concluded that the trial court had committed an error of law when it determined that such a privilege applied to this case and that a new trial must be awarded. The Media Defendants filed a petition for review with this court. We granted review, limited to the issue of whether there is a federal or state constitutional basis for declaring that the media, in defamation and false light actions, enjoy the protections of a doctrine known as the neutral reportage privilege.

III. ESSAY QUESTION (30 minutes)

1. Choose any post-N.Y. Times v. Sullivan case we studied in this course with which you disagree, exemplifying the tension between the two worthy values of protecting individual dignitary interests and protecting First Amendment values. The only cases that are off limits for this Part III are cases you have addressed in Parts I and II, such as Jones v. Clinton and Norton v. Glenn.
2. Explain why the case you have chosen exemplifies that tension.
3. Do a critical analysis of the case you have chosen, stating the reason(s) for your disagreement, and pointing out difficulties with the court's resolution of the issues involved.
4. Explain how the court should have decided the case.