

Civil Procedure II

Professor Blaze

Spring 2007

Discussion Problems No. 1

1. A senior partner gives you the following facts and asks you to draft a complaint for federal court:

Your client, Bruce Pearl, was seriously injured in a car accident with Steve Spurrier when Spurrier ran a red light. The accident occurred at 16th Street and Clinch Avenue in Knoxville on October 21, 2006. Pearl was driving home at the time. Spurrier, who lives and works in Columbia, South Carolina was in town on business at the time. Pearl suffered a broken leg, strained back, numerous lacerations, contusions, and abrasions. Medical bills to date total \$65,000.

Draft the complaint. What do you have to include? What would you include?

2. The senior partner, satisfied with your draft in #1 above, asks you to draft a complaint for federal court based on the following facts:

Your client, Don Paine of Knoxville, entered into a contract on September 15, 2006 with Dwight Aarons to construct an addition on Paine's house. Aarons is from Asheville, N.C. Paine paid Aarons \$75,000 up front. Aarons never did the work and refuses to return the money.

Draft the complaint. What do you have to include? What would you include?

3. In response to #1 and #2 above, would you do anything different if the complaint were being filed in state court? See Chism v. Mid-South Milling co., Inc., 762 S.W.2d 552 (Tenn. 1988); Swallows v. Western Elec. Co., 543 S.W.2d 581 (Tenn. 1976); TRCP 8.01 (all of which are available online).

4. What if your medical experts told you that Pearl in #1 now suffers severe depression due to post-traumatic stress syndrome as a result of the accident? Would you include an allegation to that effect in the complaint? Do you have to? (See FRCP 9(g)).

5. In #2 above, you further learn that Aarons told Paine that he was licensed, bonded, had 10 years experience, and that he specialized in room additions. None of that is true. You want to include a count for fraud. What do you have to allege?

6. Assume in #1 above that Pearl comes into the office 2 months after the accident. What do

you have to do to comply with FRCP 11? What if he comes into your office and gives you the facts set forth above the day before the statute of limitations runs -- can you file the suit? Assume that you file and then later learn through your investigation that Pearl, not Spurrier, was at fault. Have you violated FRCP 11? What should you do?

7. You are a newly admitted lawyer working as an associate in a large law firm. A senior partner represents a big businessman in town who gives the firm several million dollars in business a year. The client is upset because his neighbor has let his lawn grow up to three feet high and it looks terrible. The partner asks you to research Tennessee nuisance law. Upon doing so you learn that Tennessee does not recognize a nuisance action based solely on aesthetic degradation. The partner tells you to draft and file a complaint anyway -- saying "at least we can get their attention." What do you do?