Exercise 3-B

Identify the facts, issue, law, holding, and reasoning in Barrett v. State, *the case in Exercise 3-A above.*

Exercise 3-C

Read the following (edited) case. Write a case brief succinctly summarizing the facts, issue, law, holding, and reasoning. Identify the dictum.

WHELAN
v.
WHELAN
(588 A.2d 251)
Superior Court of Connecticut,
Judicial District of Waterbury.
Jan. 15, 1991.

* * *

BLUE, Judge.

* * *

. . . The facts giving rise to the plaintiff's claims must be taken from her amended complaint. *Kilbride v. Dushkin Publishing Group, Inc.*, 186 Conn. 718, 719, 443 A.2d 922 (1982). The plaintiff claims that on April 6, 1987, while she was married to and living with the defendant, he falsely told her that he had tested positive for acquired immune deficiency syndrome (AIDS). He further told her that he wanted her to take their son to her original home in Canada so that they would not see him suffer and die. She alleges that this false statement, which she relied upon by going to Canada, caused her "severe anxiety and emotional distress and worry about whether she had [contracted] the AIDS virus, about the defendant's own alleged suffering and impending death, and about what the future of her son would be if her son became an orphan." The plaintiff claims that this emotional distress was inflicted intentionally and that the defendant's conduct was "extreme and outrageous." She seeks money and punitive damages.

* * *

The tort of intentional infliction of emotional distress was recognized by the Connecticut Supreme Court in *Petyan v. Ellis*, 200 Conn. 243, 253, 510 A.2d 1337 (1986). . . . [I]n order for the plaintiff to prevail on her claim, she must establish four elements: "'(1) that the actor intended to inflict emotional distress; or that he knew or should have know that emotional distress was a likely result of his conduct; (2) that the conduct was extreme and outrageous; (3) that the defendant's conduct was the cause of the plaintiff's distress; and (4) that the emotional distress sustained by the plaintiff was severe.'" Each of these elements is alleged in the amended complaint. . . .

The defendant was undoubtedly correct when he pointed out at oral argument that virtually all dissolutions of marriage involve the infliction of emotional distress. See *Raftery v. Scott*, 756 F.2d 335, 341 (4th Cir. 1985) (Michael, J., concurring). For the tort of intentional infliction of emotional distress to be established, however, the plaintiff must allege and prove conduct considerably more egregious than that experienced in the rough and tumble of everyday life or, for that matter, the everyday dissolution of marriage. As Prosser and Keeton explain, "[w]hen a citizen who has been called a son of a bitch testifies that the epithet has destroyed his slumber, ruined his digestion, wrecked his nervous system, and permanently impaired his health, other citizens who on occasion have been called the same thing without catastrophic harm may have legitimate doubts that he was really so upset, or that if he were his sufferings could possibly be so reasonable and justified under the circumstances as to be entitled to compensation." W. Prosser & W. Keeton, *supra*, 59. Liability exists only "for conduct exceeding all bounds usually tolerated by decent society, of a nature which is especially calculated to cause, and does cause mental distress of a very serious kind." *Id.* at 60. "[A] line can be drawn between the slight hurts which are the price of a complex society and the severe mental disturbances inflicted by intentional actions wholly lacking in social utility." *Knierim v. Izzo*, 22 Ill. 2d 73, 85, 174 N.E.2d 157 (1961). "Liability has been found only where the conduct has been so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." 1 Restatement (Second) Torts § 46, p. 73, comment (d).

Under this standard, the court is satisfied that the plaintiff has pleaded a recognizable claim. The court does not doubt that insult, indignity and genuine distress are part and parcel of most, if not all, marital breakups, but there is an enormous difference between these unfortunately routine indignities and a false statement to one's spouse that one has AIDS. The former will doubtless cause sadness and grief, but the latter is likely to cause shock and fright of enormous proportions. The former may now be commonplace in our society, but the latter would, nevertheless, in the language of the Restatement, "be regarded as atro-

cious and utterly intolerable in a civilized community." If a third party, in an apparent position to know, had intentionally and falsely told the plaintiff that her husband had AIDS, she would undoubtedly have a cause of action against that third party for the intentional infliction of emotional distress. That much follows from the seminal case of *Wilkinson v. Downton*, [1897] 2 Q.B.D. 57, holding that a cause of action existed against a defendant who falsely represented to a married woman that her husband had been seriously injured in an accident. The fact that the false speaker is the husband himself should make no legal difference. "When the purposes of the marriage relation have wholly failed by reason of the misconduct of one or both of the parties, there is no reason why the husband or wife should not have the same remedies for injuries inflicted by the other spouse which the courts would give them against other persons." *Brown v. Brown*, 88 Conn. 42, 48-49, 89 A. 889 (1914).

In the context of the present case, the matter is, if anything, aggravated by the fact that the person making the statement is the husband since that fact would enhance the verisimilitude of the statement and intensify its likely impact. Whether the plaintiff's claim can be established in fact remains to be seen, but her claim is one that the law recognizes. The motion to strike directed at the entire complaint is, therefore, denied.

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