

Professional Responsibility Midterm Exam
Fall 2006

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Introduction:

This is an open book exam. You may bring in any written or published materials you deem helpful. You should assume our state has adopted the 2006 version of the ABA Model Rules, including the Comments. The state's Supreme Court has also, in a number of cases, looked favorably at the Restatement of Law Governing Lawyers to answer issues not controlled specifically by the rules.

You may rely on other sources of law we have studied if helpful to your answers. Be sure to identify clearly any source you rely upon, including the Rules themselves and the Comments.

The total time for the exam is 1.5 hours. There are three essay questions, *all of which come directly from the casebook*. Please try to organize your essay answers carefully. Brevity and precise, well-organized analysis will be rewarded; rambling answers will not.

The point value for each essay question is 25. The total point value for this exam is 75, which is 25% of the final grade for the course. As I said in the course syllabus, final grade adjustments may be made for meritorious class participation.

Please put your answers to the essay questions in the bluebook and make sure your exam number is on it. Write only on **one side** of the page, **every other line**, and please use ink. Although given my own penmanship I am clearly not the one to ask this, please try to write legibly. I can't give credit for that which I am unable to read.

If you find yourself running out of time, I recommend outlining the rest of your essay answer.

Good luck.



1. Slip and Fall (Part 1)

Edith Walton, shopping in Tracy's Department Store, slipped in the third floor timepiece department and broke her hip. She sued, alleging that the floor was excessively waxed. Under store policy, whenever someone is injured in the store, the General Counsel's Office will oversee an investigation. An hour after the fall, Jeanne Parr, as assistant GC, asked Mike Todd in security to investigate. Todd interviewed (a) Max Burkow, head of maintenance; (b) Tim Morse, who last waxed the floor; (c) Tina Sandstrom, a salesperson in men's furnishings who was returning from a break; (d) Rex McCormick, a buyer in the rug department who, though off work that day, had come to the store to do personal shopping; (e) Delia Corcoran, Burkow's predecessor as head of maintenance, since retired, who established the store's standards and procedures for floor waxing a year ago; (f) Ed Rivera, president of the company that supplies wax to Tracy's; and (g) Angie Kuhl, who was at Tracy's buying a watch for her father. Only Sandstrom, McCormick and Kuhl saw Walton fall. Todd wrote up the interviews and gave his memos to Parr. Cora Lundquist, Walton's lawyer, noticed the deposition of each of the seven people Todd interviewed. She asked Burkow about maintenance procedures. She asked Morse about procedures in waxing floors generally and on this occasion. She asked Corcoran about the floor waxing standards and procedures she established. She asked Rivera about the instructions his company may have given Tracy's on the use of the wax. She asked the others what they remembered of the incident. Each witness had some memory failure. Lundquist demanded production of Todd's memos, and Parr asserted attorney-client privilege. Is she right? Explain your answer as to each witness.

Slip and Fall (Part 2)

"Slip and Fall Part 1" asked you to determine whether memoranda from the interviews Mike Todd, Tracy's investigator, had with various witnesses were subject to the attorney-client privilege. Cora Lundquist, the plaintiff's lawyer, would also like to interview Todd and the individuals whom Todd interviewed. Would the "no-contact" rule prevent her from conducting informal interviews with Todd and any or all of the witnesses without first seeking opposing counsel's permission? Why or why not?

2. What Kind of Consent?

“I have a solo practice in a small city. I do work for small companies. One thing I really enjoy is startups, a young person usually with an idea and a lot of energy and determination but not so much money. They want advice – how to get started, should they incorporate, taxes, negotiate a lease, raise capital, trade name.

“Yesterday, I read an article in the state bar journal. Conflicts. Some of the startups are two, three, four people. This article says I need a consent. And meanwhile, a day earlier, I had some new clients come in, three nice people who want to start a partnership that will run birthday parties for children. One’s a magician. One’s a baker and makes the birthday cake with the children. One does a thing with puppets I’m not too clear about. And they all play music. They hope eventually to hire people with other talents and offer various packages to parents.

“The magician is going to put up most of the money. The baker has most of the contacts because she has been baking for children’s parties for a long time. The puppeteer is going to handle the management.

“Can you draft a client consent form, covering the major points?”

3. You Don't Know Anything

Lakoff was an associate at the Penbauer Firm for three years following law school. Penbauer represented AxiMartin Carburetor as outside counsel on transactional and litigation matters, sometimes working with AxiMartin's three inside lawyers. Lakoff worked on the litigation side and helped the partners defend AxiMartin in a mix of matters, including breach of contract, breach of warranty, and tort cases. Occasionally, AxiMartin got involved in employment issues, including union issues, and ERISA, labor law, OSHA, and overtime claims. Lakoff worked on some of these. AxiMartin was twice sued for age discrimination while Lakoff was at Penbauer and he worked on both suits, which settled.

After leaving Penbauer, Lakoff went to another firm in the same city, Cross, Cudlup & Charles. CCC, as it was known, had nine lawyers counting Lakoff.

A year after Lakoff went to CCC, he was asked to assist Cudlup on a sex discrimination case against AxiMartin. This was a new case. Ariana Stile, the plaintiff, joined AxiMartin after Lakoff left Penbauer. Stile claimed that AxiMartin constructively discharged her because the other mechanical engineers, all men, were complaining about working with a woman and because she objected to what she considered sexist comments and conduct.

"Can I do this?" Lakoff asked Cudlup. "I mean I used to work at Penbauer defending AxiMartin, including two age discrimination cases. Penbauer will probably defend this one too."

"You didn't work on this case," Cudlup said. "You never worked on a sex discrimination case. What do you know about it or the company's defenses? You don't know anything. No rule says you can never sue a former client."

May Lakoff work on *Stile v. AxiMartin*? Explain your answer.