

EXAM # _____

**Professional Responsibility Midterm Exam
Fall 2005**

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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 2005 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 five 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 15. 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.

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1. Slip and Fall

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.

2. Slip and Fall Redux

"Slip and Fall" 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?

3. May the Lawyer Be Our Client?

“We’re a twelve-lawyer litigation boutique. We each have a specialty. Mine is intellectual property. I have a case against Rich Bellow. My client says Bellow’s client is infringing on a registered trade name. Bellow is a partner at a good firm in town. Bellow’s firm got sued for malpractice because of its work on a merger agreement. Bellow wasn’t involved. His managing partner came to my partner, Nola Krinsky, whose specialty is – you guessed it – defending attorney malpractice. Nola mentioned the potential case at a new business meeting. Whoa. I told her I represent a client against Bellow. Nola says, ‘So what, Jen; the cases have nothing to do with each other.’ Is she right? I mean, can Nola defend Bellow’s firm while he’s my adversary? Do we need anyone’s okay? Does Bellow’s firm? And, if so, what are we asking them to agree to?” Explain your answers.

4. Will You Represent Us Both?

“As the Supreme Court has made it harder to bring Title VII actions for employment discrimination, and harder for plaintiffs’ lawyers to collect counsel fees, my colleagues and I have gotten more and more requests for help. We work at the Deadwood Fair Employment Resource Center. The other day two guys, Miguel Nunez and William Joseph – who are Hispanic and African-American, respectively – came in to see me. They were both passed over for a supervisory promotion. Instead, their employer, Beware Industries, a manufacturer of security devices, gave the job to a white guy with substantially less seniority. Miguel and Bill believe they were the victims of discrimination based on their national origin and race. ‘Sheila,’ they pleaded with me, ‘we went to five or six lawyers, but we can’t afford to pay, and the lawyers are afraid they won’t get a big enough fee from the court.’ No one else at Beware is in Miguel and William’s position. There’s certainly no class action here. I’m not sure we can take on another case right now, but even if we can, I’m not sure whether or how we would represent both of them. Whoever we don’t represent will not get a lawyer. What’s your advice?”

5. May We Do Both Cases?

“Our Chicago office has been asked to represent some landowners who want to file a federal action challenging the constitutionality of a Wisconsin law that regulates the use of their land in a way that, they say, amounts to a taking. We’d be seeking to invalidate the law under the Fourteenth Amendment and the state constitution. The case will eventually be resolved in the Seventh Circuit or maybe higher.

“Meanwhile, a partner in our Los Angeles office is a member of an organization, Pacific United Respiratory Alliance (PURA), that wants him to file a brief for it as amicus on the side of the county in a federal action brought by some developers. The developers are challenging a county law that restricts the use of their property. PURA doesn’t think the county lawyers, good as they are, are as familiar as our partner with this specialized field, and they’re right.

“Now the two laws are very similar but not identical. It’s possible that one is valid and the other is not, or that neither is valid, or that both are. It’s possible that either is invalid under the respective state constitutions. But it is most likely that the validity of either will depend on an interpretation of the Fourteenth Amendment. I can see where in one case we would be arguing for a federal constitutional construction that is inconsistent with our argument in the other case.

“So my question is, can we take both cases? Do we need consent? Is there anything else you need to know?”