

LEGAL PROFESSION

Spring, 1995

Professor Terrell

FINAL EXAMINATION

Time: 3 hours

INSTRUCTIONS:

1. This is a closed book examination. You will be given a copy of the "Model Code of Professional Responsibility" and the "Model Rules of Professional Conduct" for this examination.
2. You have a maximum of 3 hours to complete the examination.
3. The examination consists of twelve questions. Please make certain that your copy of the examination contains all twelve.
4. There are 141 total raw score points available on the exam. The raw score points available on each question are noted at the beginning of each question, along with a suggested time allotment for each question corresponding to the relative number of raw score points available on that question.
5. Note: The average amount of time allotted to each question is about fourteen (14) minutes. Your answers will therefore necessarily be relatively short. Make them efficient and to the point. However, they also should be thorough. To be thorough in your responses, you should often argue not only why a particular conclusion you have reached is correct, but in addition why competing possibilities would be incorrect.
6. At any point in this examination, if you believe you lack crucial information for an adequate answer, you are entitled to note the information you believe you need, and if necessary make a reasonable assumption concerning that information. You must be explicit about such notations and assumptions.
7. Any announcements concerning the examination shall be made in the room assigned for the examination and the typing room.
8. Good luck.

Question One
(14 raw score points; 19 minutes)

Attorney Alexander is an associate in a large law firm, and she is currently involved in the firm's representation of a defendant in a products liability case. Early on in this litigation, the plaintiff filed a document discovery request that calls on the defendant to produce all "final reports" of its expert witnesses, and any "interim reports containing tentative theories." Attorney Alexander recently found in the client's files a letter from one of the experts in which the expert speculates about one possible defect in the defendant's product that may have caused the injury in this case. This letter had not been previously produced in discovery, nor has the plaintiff's lawyer found it in the few, very superficial searches he has done of the defendant's records.

Attorney Alexander took the letter to the partner in the firm in charge of this litigation, Attorney Huff, and noted to him that it should be sent to the plaintiff's lawyer immediately to comply with the earlier discovery request. Attorney Huff, however, disagrees, concluding that the letter is not a "report," and that the expert's speculations are not a "theory."

Attorney Alexander is upset by this response, believing firmly that failure to produce the letter is unethical. She calls you, a law school classmate whose judgment she respects, and asks your advice on the situation. She wonders if she is "safe" in this situation, but even if she is, she also wants to know what she should do next to challenge this partner's decision. Give her as complete a picture as you can.

Question Two
(18 raw score points; 26 minutes)

Attack or defend the following proposition:

The adversary system of dispute resolution is simply inconsistent with the concept of lawyer professionalism. In this system, lawyers regularly denigrate efforts to determine the truth that lies behind the dispute, and in doing so, necessarily denigrate as well the professional status they enjoy in society.

Question Three
(12 raw score points; 12 minutes)

When attorney Aldrich was in private practice, she defended client Costa in two criminal assault and battery cases. The cases were three years apart, and both times the victim was Vincent, Costa's brother-in-law. Costa was convicted in both cases. Thereafter, Aldrich was elected County Prosecutor. As County Prosecutor, Aldrich hires and fires deputy prosecutors and generally supervises their work. As time permits, she also personally prepares and tries some cases. Her former client Costa is in trouble again, this time for the apparent first-degree murder of Vincent. A state statute requires all first-degree murder prosecutions to be conducted under the "direct, immediate, and personal supervision" of the County Prosecutor. The statute further provides that the State Attorney General's Office shall take over any criminal prosecution in which the local County Prosecutor cannot act due to a conflict of interest.

- (a) Can Aldrich and her office proceed?
- (b) What if the facts were reversed, and Aldrich had prosecuted Costa earlier, and Aldrich was now asked to defend him? Could Aldrich do so?

Question Four
(8 raw score points; 10 minutes)

Lawyer Yeager has been retained by the officers of Amalgamated Finishers and Patternworkers Union, Local 453, to draft a new set of bylaws for the local. Yeager strongly disagrees with two of the provisions the officers want included in the new bylaws. The first would deny members of the local the right to vote on some issues that involve the expenditure of union funds, and would give the officers remarkable discretionary power over union pension funds as well. The second provision would limit the access of union members to information about the handling of union and pension funds by union officers. Although Yeager believes that both provisions are lawful and consistent with the national union charter, she believes they would be unwise and inconsistent with the best interests of the members of the local. Does Yeager face any ethical dilemmas here? If so, what options does she have?

Question Five
(10 raw score points; 11 minutes)

Law partners Norman and Enid are too busy to spend much time discussing their legal work with each other. For many years, Enid's major client has been Erotic Corporation, a diversified electronics firm with worldwide operations. Most of Norman's time is devoted to his work as outside general counsel for North American Industries, Inc. It is a diversified manufacturing company with operations in Canada, the United States, and Mexico.

Enid filed a law suit in the United States on behalf of a French subsidiary of Erotic. The defendant was a Canadian joint venture. When Enid received the answer to the complaint, he was shocked to discover that North American was one of the three joint venturers, and that Norman was listed on the caption of the answer as "Of Counsel" to the joint venture. Immediately after Enid called this to Norman's attention, Norman explained the situation to North American and to the lead counsel for the joint venture. Both readily consented to the removal of his name from the pleading. Enid then continued in the case as counsel for the plaintiff, Erotic's French subsidiary. Are either Enid or Norman subject to discipline?

Question Six
(12 raw score points; 13 minutes)

Attorney Anderson is advising his client, Cass, on a real estate transaction when Cass suddenly pulls a package from his pocket and confesses that it contains cocaine. Cass admits that he has had a drug problem for a couple of years, but is trying desperately to kick the habit. He further confides that this particular bag belongs to a friend of his who has recently been arrested for selling narcotics. The friend gave it to Cass for "safekeeping." Cass now wants you to hold it for him so that he will not be tempted to use the cocaine it contains.

- (a) May Anderson "hold it" for Cass for the time being?
- (b) May Anderson advise Cass to throw the package away?
- (c) May Anderson accompany Cass to the nearest toilet where the two of them will dispose of the contents?
- (d) May Anderson contact the police about the cocaine?

Question Seven
(15 raw score points; 16 minutes)

Tillingham, Wadsworth & DePew is a sprawling business law firm with 100 partners, 200 associates, and branch offices in eight major cities. Reynard DePew is the senior partner in charge of the firm's Washington, D.C., branch office. A year ago, he was retained by Transpac Oil Company to prepare some Transpac executives to testify before a Senate committee in opposition to proposed antitrust legislation that would require all integrated oil companies to divest themselves of their retail service stations. In connection with this work DePew received truckloads of confidential documents from Transpac concerning competitive conditions in the retail end of the oil industry. Eight months after the matter was concluded, the Independent Service Station Dealers of America asked the firm's Denver office to represent it as plaintiff in an antitrust action against nine major integrated oil companies, including Transpac. Assume that DePew did not share the confidential information he had received from Transpac with anyone in the firm's Denver branch office, nor did he ever discuss the matter with anyone in the Denver office; indeed, no one in the Denver office even knew that DePew was working on the matter.

(a) May the Denver office accept the case without Transpac's consent?

(b) Assume that during the time DePew is representing Transpac, the firm's Denver office splits off and becomes a separate firm. Shortly thereafter, while DePew's case is still going on, the Dealers association comes to the new firm and wants to retain it to sue the oil companies, including Transpac. Can it do so?

Question Eight
(8 raw score points; 11 minutes)

Client Christenson asked attorney Alder to prepare some legal papers in connection with Christenson's proposed public sale of investment shares in a real estate venture. Alder advised Christenson that it would be a felony under state law to sell the shares without first registering them with the State Commissioner of Real Estate. Assume that a reasonable lay person would not realize, without a lawyer's advice, that this conduct would be criminal. When Christenson heard Alder's advice, he told Alder simply to abandon the project. Later Alder learned that Christenson went ahead and sold the shares to the public without registering them. Which of the following items are correct? Explain.

- I. Since Christenson sought Alder's aid in committing a future crime, the attorney-client privilege does not cover the communications between them.
- II. Alder *must* contact the State Commissioner of Real Estate and reveal what he told Christenson.
- III. Alder *may* contact Christenson and urge him to take appropriate steps to rectify his wrong.
- IV. It would be *proper* for Alder not to tell any outsider about his communications with Christenson.

Question Nine
(10 raw score points; 12 minutes)

Your client is one of two co-defendants, and you have filed a cross-claim against the other defendant. A former employee of the other co-defendant comes to you and says he has vital information about his former employer's actions relevant to this case that will be "very helpful" to your client. Are there any ethical problems that might arise if you now continue the conversation by asking what that information is?

Question Ten
(10 raw score points; 12 minutes)

Discuss the special legal ethical circumstances faced by in-house corporate counsel.

Question Eleven
(12 raw score points; 12 minutes)

Of the six essential elements of professionalism identified in the "Rethinking Professionalism" article, which of them apply to law students, and in what way? Which of these do not apply to law students, and why?

Questions Twelve
(12 raw score points; 12 minutes)

In which of the following situations would the information received by the attorney, or the information being sought by the other side, be covered by either the attorney-client privilege or the ethical duty to preserve confidences, or both? Explain.

- I. L represents C in an action for breach of an oral contract. When preparing the case for trial, L stumbles across a State Supreme Court decision from another state upholding C's conviction in a felony case 15 years ago.
- II. Lawyer L is defending client C in a tax fraud case. L suggests that C hire a tax accountant to examine C's records, to talk with C, and to prepare some worksheets for L to use in defending the case. The accountant turns the worksheets over to L.
- III. Lawyer L is defending C in a robbery case. C's co-defendant in the case is X, who is represented by lawyer A. All four of them meet to discuss the case and potential defense strategies. C is accompanied to the meeting by his mother, and A brings one of his firm's paralegals. The prosecutor asks L and C what was discussed at the meeting, and C seems inclined to talk.