

CAPITAL UNIVERSITY
LAW AND GRADUATE CENTER

PROFESSIONAL RESPONSIBILITY (A)
FALL SEMESTER, 1994
FINAL EXAMINATION

PROFESSOR STRASSER
NOV. 28, 1994
TAKE HOME

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 5:00 P.M. ON THURSDAY. As a matter of convenience, the exam may be turned in earlier. Please make sure that you put your exam in the CORRECT box -- Professional Responsibility (A) (Monday 3:30-5:30)
2. The exam must be TYPED (word processing output is acceptable) and DOUBLESPPACED on 8 1/2 by 11 paper. There should be 1 INCH MARGINS, and the print should no be smaller than 12 c.p.i. (characters per inch). THE EXAM MUST NOT EXCEED TWELVE (12) PAGES. (Points will be deducted if the exam exceeds 12 pages.) You may only write on one side of each page. Number your pages. You may allocate the pages as you see fit. However, YOU SHOULD BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE.
3. The questions are of EQUAL WEIGHT.
4. You are not permitted to consult with anyone about the questions or answers until all papers have been submitted. YOU SHOULD BE ABLE TO DO VERY WELL ON THIS EXAM WITHOUT ANY OUTSIDE RESEARCH.
5. AMBIGUITIES: If you find the facts given to be insufficient to answer a question, state any additional factual assumptions you deem necessary and answer the questions as though your assumptions were part of it. DO NOT MAKE THE MISTAKE OF CHANGING THE QUESTION BY CHANGING THE FACTS.
6. IDENTIFICATION: Write your exam number on the first page and on every succeeding page. Neither your name nor any other identifying mark, other than your exam number, should appear anywhere on your answer.
7. Take time to organize your answers, which should be concise and to the point. You should discuss ALL RELEVANT ISSUES even if one issue might dispose of the case. This exam requires you to do ISSUE-SPOTTING and ANALYSIS.
8. REPETITION: When I grade these, I will look at Question One in ALL of the exams and then look at Question Two in ALL of the exams. Merely because you have said something in Question One does not mean that you will get credit for it in Question Two should the same point be relevant in both questions. DO NOT CROSS-REFERENCE. (I don't want my judgment of how you are doing in Question Two to be affected by my judgment of how well you did on Question One.)
9. CITATION: When citing to a case we discussed in class, it will suffice to use the name of the case, e.g., the Upjohn Court or the Hopps court.

QUESTION 1

Carrie Chason, attorney at law, arrived at her office one morning and found Lonny Lincoln there waiting for her. Lonny explained that he might be arrested for the murder of Thaddeus Thoreau, whose body Lonny had hidden in a remote part of a nearby nature preserve. (Thaddeus had always talked about the importance of communing with nature.) Carrie asked Lonny to make a map indicating where the body was. Lonny complied.

Lonny is unsure about what actually happened the night of Thaddeus's death. Lonny had been drinking heavily at Thaddeus's house, had lost consciousness, and had awakened to find Thaddeus's body beside him. Next to the body was a very heavy trophy. Lonny panicked, certain that his criminal record involving assault and battery would make him a suspect. He decided to hide the body.

Carrie was not entirely surprised by Lonny's simply showing up at her office door. Sly Sloan, a dark-haired man about 5'9" who was Thaddeus's business partner and Carrie's longstanding client, had called her the day before to warn her that Lonny might contact her. Sly had mentioned to Lonny that Carrie had an excellent reputation as a criminal lawyer and that she was someone who could be trusted.

Carrie accepted a \$100 retainer from Lonny and promised to investigate. He left her office.

First, Carrie went out to Thaddeus's house. The door was unlocked. She entered without disturbing anything. She saw a heavy trophy covered with blood lying on its side next to the couch (which was completely across the room from the fireplace). A bottle of Jack Daniels, virtually empty, was on the floor. There was a trail of blood leading away from the couch (and away from the fireplace) toward the front door.

Before she could examine the room more closely, a police car drove up. Two policemen came inside and asked her what she was doing. She explained that she was conducting an investigation in light of information which had been relayed to her by a client.

In response to their questioning, Carrie identified herself but refused to identify her client. She was told that her refusal to name her client violated Capola Statute 106.21 which reads:

"Failure to answer the questions of a police officer which are asked in the officer's official capacity is a misdemeanor punishable by a \$100 fine."

Carrie remained silent.

(Ignore any First Amendment issues raised by this statute.)

When Carrie finished speaking to the officers, she left in search of the body. The map, which she had been given was quite accurate and she was able to find the body relatively easily. She did not disturb the body in her examination of it. Although she was not an expert, she assumed from what she could see that Thaddeus had been hit in the head several times. When the police asked her point-blank several days later where the body was, she replied, "I have no idea. I would certainly tell you if I knew." When later asked by the prosecuting attorney to produce any physical evidence related to the crime that her client had turned over to her, Carrie replied that she had no such evidence.

When Carrie returned to her office, her secretary Ella Wheat told her that Lonny had called

while she was out to report that he had been arrested. Lonny's fingerprints had been on the fifth of Jack Daniels that had been found.

Even after Lonny's arrest, the police halfheartedly followed other leads. For example, Sly Sloan had some heated arguments with Thaddeus in public. Further, Sly was now the sole owner of the business which he and Thaddeus had developed. However, these leads had not yielded anything fruitful - Sly's wife had told the police that she and her husband had been home that entire evening.

A few days before trial, Carrie had an anonymous tip on her answering machine suggesting that a dark-haired man of average height had been seen prowling around Thaddeus's house the evening of his death. Paula Mallard, the private investigator employed by Carrie, found out that Sly Sloan had used a credit card to buy gasoline on the night in question at a station a few blocks from Thaddeus's house. Although Carrie knew that Sly lived in a different section of town, she decided not to ask him about his whereabouts that night.

Carrie tried to convince Lonny not to testify at trial. She suggested that the prosecution's case was weak - based mostly on circumstantial evidence. There was no body and no witness to Lonny's having been at Thaddeus's house that evening. Further, there were no fingerprints on the trophy. Nonetheless, Lonny insisted on testifying and insisted on admitting that he was at the house that night.

During his testimony (and without having heard anything concerning the contents of the anonymous tip), Lonny said that he suddenly remembered having seen a dark-haired man of about average height hurrying out of the house on the evening of Thaddeus's death. In the same breath, he admitted that he could not identify the individual.

At this point, Carrie pointed out to the court that she had many questions for her client. Since it was almost noon, Carrie requested that they take the lunch recess at this point.

During the recess, Carrie warned her client that she could not suborn perjury. She pointed out that he had told her that he had been unconscious and that now he was changing his story, claiming to have seen some mystery person. She explained that were he to continue to maintain that he had seen this person, she would ask the court to allow her to withdraw from the case. Lonny responded that he was not perjuring himself and that he had suddenly remembered seeing this individual. Carrie repeated her warning.

When the trial resumed, Carrie announced that she had no more questions for her client. Lonny said nothing.

On cross-examination, Lonny admitted having moved the body and admitted having given Carrie a map indicating where the body was.

Lonny was convicted and sentenced to life imprisonment without possibility of parole. You have been asked to decide whether you want to handle his appeal. Discuss all relevant issues, including what actions you will take or advice you will give with respect to possible complaints to the Capitania State Board on Professional Discipline. The Professional Code adopted by the state of Capitania conforms to the **Model Code of Professional Responsibility**.

QUESTION 2

One day, Adele Abrams came into Samantha Smith's office complaining that she had suffered food poisoning as a result of having eaten at a local fast food franchise, Dairy King. Samantha said that she would do some investigating and would get back to Adele. After making some inquiries, Samantha was sure that she could establish the causal links necessary to make her case. Apparently, the Public Health Dept. had received a variety of complaints and had indeed determined that Dairy King had served bad meat and had been responsible for numerous cases of food poisoning. Samantha contacted Adele and agreed to represent her, subject to Samantha's receiving 1/3 of any settlement or court award.

Samantha filed the appropriate papers. She was contacted by Jonas Jones, the attorney for Dairy King. Jonas indicated that he was confident that some mutually agreeable result could be obtained. Samantha agreed to meet with him. He suggested that his client would be willing to pay Adele \$10,000 if she would be willing to sign a non-disclosure agreement and would be willing to waive all claims against the local franchise and the national organization. Samantha promised to relay the information to her client.

That night while watching her favorite TV show, Ear to Ear, Samantha heard about a suit involving the national headquarters of Dairy King. Apparently, their in-house counsel, Will Whistleblower, was bringing an action against Dairy King, claiming retaliatory discharge. Will had alerted the FDA that the written policies of Dairy King called for their hamburgers to be cooked at a dangerously low temperature to insure their juiciness. After the show was over, Samantha called Jonas and left a message suggesting that his offer was unacceptable and that it would have to be much better if he was really interested in settling.

Samantha wanted to see whether the local franchise had indeed been utilizing these unsafe cooking procedures discussed on Ear to Ear. She went to the local Dairy King and asked to speak to the night manager. Claiming to be a reporter, she asked him how long they cooked their hamburgers and at what temperature. Hoping to get his name in the paper, he gave her as much information as he could.

Amazingly, this franchise cooked the meat at a lower temperature for an even shorter period of time than had been recommended by the national office. Samantha was both alarmed and excited - she kept seeing dollar figures wherever she looked.

On the way out, Samantha talked to some of the people who had just finished their meals. She explained that she was a lawyer, that she had it on good authority that numerous people had gotten sick at this establishment, and that she could probably win a nice award for those who needed representation. Two different people suggested that they were suddenly feeling a little sick. Samantha gave a business card to each of them and told them to call her after they got themselves to the local hospital. As she had suspected, Samantha later found out that they also had been suffering from food poisoning.

Jonas had also seen Ear to Ear that evening and was worried. He suspected that Samantha was a go-getter and would be unwilling to accept a reasonable offer. He called Elsie Ewing, the owner of the franchise, and suggested that she go talk to Ken Knight, Samantha's partner, about the possibility of Knight's representing Dairy King. Elsie asked whether that meant that Jonas was withdrawing from the case. He replied, "Of course not. This is just a tactical move."

The next day, Elsie was waiting for Ken when he got to work. Ken was annoyed. It was his first day back from vacation and he had wanted to catch up on a lot of work. Nonetheless, he talked to Elsie and told her that he would get back to her after he had talked with his partner, Samantha.

As soon as Samantha arrived, Ken went into her office and announced that he had gotten a visit from Elsie that morning. Before he could say another word, Samantha yelled that he was not to say anything else. She explained that she had already agreed to represent Adele Abrams against Dairy King and, indeed, had possibly been able to secure some additional cases against the franchise. She instructed him not to say anything. All of her notes and files on this case would now be kept under lock and key in her office. They would discuss nothing related to the case.

Later that same afternoon, Elsie called to say that she had found someone else to represent Dairy King. Shortly after Elsie called, Adele Abrams called, asking whether there had been any progress on her case. Samantha replied that she had heard nothing from Jonas Jones, but that she had seen a special on Ear to Ear which had important implications for their case. Samantha suggested, "If you can just wait this out for a year, I can guarantee a huge settlement at trial."

Adele was excited by the prospect of receiving a lot of money. However, she explained that she was short of cash and probably could not afford to wait that long. Samantha responded, "Look. There is no reason to let Dairy King get away with paying you a pittance just because you need the money right away. I'll give you a personal loan to tide you over until this all gets settled." Adele happily agreed.

Samantha works in the state of Columbia which has incorporated the ABA Model Rules of Professional Conduct. Please address all relevant issues. Be sure to discuss: (1) the difficulties posed, if any, by how the attorney-client relationship between Adele and Samantha was handled, (2) the difficulties posed, if any, by how Jonas and Samantha dealt with each other, (3) whether Samantha should be disqualified from representing Adele in this case, and (4) whether there have been any violations of the Columbia Code of Professional Conduct.