

CAPITAL UNIVERSITY
LAW AND GRADUATE CENTER

PROFESSIONAL RESPONSIBILITY
FALL SEMESTER, 1995

PROFESSOR STRASSER
FINAL EXAMINATION

INSTRUCTIONS

1. THIS EXAM IS DUE NO LATER THAN 5:00 P.M. ON FRIDAY, DEC. 15 IN MY OFFICE (121). 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 (B) (Monday 3:30-5:30) or Professional Responsibility (A) (Wednesday 9:00-11:00). if I am not there when you want to turn in the exam, ask Vicki Cosby-Jefferson (the secretary down the hall) to let you into my office to place your exam in the appropriate box.

2. The exam must be TYPED (wordprocessing 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 FOURTEEN (14) PAGES. You may only write on one side of each page. STAPLE your answer together. DO NOT CLIP YOUR ANSWER TOGETHER. Number your pages. You may allocate the pages as you see fit. However, YOU MUST BEGIN YOUR ANSWER TO EACH QUESTION AT THE TOP OF A NEW PAGE. DO NOT USE FOOTNOTES. BE SURE TO HAVE YOUR SECTION WRITTEN ON THE TOP PAGE. FAILURE TO FOLLOW DIRECTIONS WILL RESULT IN A LOSS OF POINTS.

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. 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

Lonnie Lawyer has been a criminal attorney in Columbiaville, Columbia for his entire life. One night, he was home watching his favorite T.V. show, *Murder, He Thought*, wishing that he could have one final lucrative case so that he could retire. Suddenly, the phone rang. A very wealthy acquaintance, Alice Adams, was on the phone. She sounded distraught.

Alice explained that she had come home about an hour earlier at 6:00 p.m. She had seen signs of a break-in (a window pane of a door in the back of the house had been broken and the door had been left ajar). She had not entered her home but had instead gone to a neighbor's house and called the Columbiaville police.

When the police arrived, she accompanied them into the house. They discovered a body on the living room floor. Next to the body was an unsigned suicide note saying that pests must be destroyed. A few feet away was an empty bottle of a fast-acting poison. A glass containing Jack Daniels and some of the poison was on a nearby coffee table.

When asked, Alice had told the police that she could not identify the corpse. However, Alice confided to Lonnie, she suspected that the dead person was Verona Vine, the secretary of her longtime, live-in companion, Carl Carpenter. Carl had recently remarked that Verona had been very depressed and had been acting strangely. Alice said that she thought that Carl and Verona had been having an affair and that Carl had just broken off the relationship.

Lonnie asked if Alice wanted or needed anything. Alice asked Lonnie to wait for a moment while she asked Wendy Williams (the neighbor) who was sitting right beside her whether Alice could stay for the night, since she wouldn't feel safe in her own home that night. Wendy said that Alice was of course welcome.

Alice said that she didn't need anything but that she wanted to see Lonnie in his office late in the afternoon on the following day. By then, Carl would have returned from his business trip. Not only had she already called his pager, but he had returned her call and had promised to catch the next plane.

The following day, Alice and Carl arrived at Lonnie's office late in the afternoon. By that time, the corpse had been officially identified as Carl's secretary, Verona Vine. Alice and Carl both seemed upset. As soon as they stepped into Lonnie's office they said that they wanted him to represent both of them in case either should be accused of being involved in Verona's death. They told Lonnie that they understood that multiple representation would pose certain problems but they wanted him to represent both of them nonetheless. Lonnie agreed.

Carl said that he could not understand what had happened. Without being asked, he denied having had anything more than a professional relationship with his secretary.

Alice denied ever having met Verona. Lonnie asked Alice and Carl to prepare a written, detailed description of what they each had done for the past few days. They left his office, promising to return with detailed timelines the following day.

Late the following afternoon, Alice went to Lonnie's office and gave him an envelope containing the timelines and a letter she had received in the mail the day of Verona's death. The letter, signed by Verona Vine, explained that Verona and Carl were having an affair, that Carl no longer loved Alice, and that Verona was carrying Carl's child.

Alice said that no one besides Carl had seen the letter. Lonnie said that he would keep it and that it would be protected as work product as would the time-lines.

Later that night, Alice was arrested and charged with murder.

The case went to trial. The autopsy had revealed that Verona had been pregnant at the time of her death and that the cause of death had been fast-acting poison. There had been testimony that Carl and Verona had worked together late in the evening on several occasions and that they would sometimes dine together after work, e.g., when Alice was out of town on business. There was further testimony that on the day she had died, Verona had received a call at work around 12:00 noon, that she had looked agitated after receiving the call, that she had immediately left work after finishing the phone conversation, and that she had not returned that day.

On the glass containing the poison were fingerprints belonging to both Verona and Alice. The time of death had been placed at some time between 1:00 p.m. and 3:00 p.m. that afternoon.

Numerous clients of Alice's testified that she had met with them on the afternoon in question -- she had been with clients from 1:15 p.m. to 5:00 p.m. The client who had met Alice at 5 p.m. testified that although Alice had seemed a little preoccupied, she certainly had not acted like someone who had just committed a murder.

A clerk at a store near Alice's house remembered that a woman had bought the fast-acting poison early in the afternoon on the day that Verona had died. He had never seen the product before and had asked the woman what it was for. She said that it was for getting rid of unwanted pests. The clerk thought that Alice had bought it but, on cross-examination, admitted that Alice did a fair amount of shopping at the store and that he couldn't be sure whether it had been Alice or someone else who in fact had purchased the poison.

Carl had testified that he had not had an affair with his secretary and that he had no idea why she would have killed herself, although she had been acting strangely recently. Carl further testified that he had asked Verona the day before he left on his business trip whether anything was wrong because her recent work had been uncharacteristically sloppy and careless.

At this point, Lonnie wanted the defense to rest. The prosecution's case was weak and circumstantial. However, Alice insisted that she wanted to testify, lest there be any doubt about her innocence.

Alice testified that she had never met Verona and that she had lived happily with Carl for the past ten years. She further testified that her schedule had been filled the day that Verona had died and that she would not have been able to have seen Verona that day even if she had wanted to do so.

On cross-examination, Alice admitted that she had gone home for lunch that day, but that she had barely had time to eat lunch and read the mail. She testified that she had left her lunch dishes and glass in the sink because she had to hurry to meet a client at 1:15 that afternoon. She again denied that she had even suspected that Carl and Verona had an affair.

The defense rested.

To the surprise and chagrin of the defense, the jury convicted Alice, apparently believing that there was both motive and opportunity.

You have been asked to defend Alice on appeal. In addition to all of the facts mentioned above (including, e.g., the existence of the letter written by Verona), you have discovered the following information:

While Carl had in fact been out of town on business, he had returned earlier than Alice had believed. When he had learned at the corporate offices that the financial records had contained substantial irregularities, he had caught the next available plane back home. He had called Verona at 12:00 noon that day. He had suspected that she had been stealing money from the business and had confronted her with his suspicions. Their meeting, which had lasted a mere fifteen minutes, had started at 12:30 p.m.

Carl had not wanted to admit that he had met his secretary that day. Premature disclosure of the financial irregularities would have had severe repercussions for the company and for his career, especially because he thought that he saw a way that everything could be fixed without anyone ever finding out what had happened. He had made clear to Lonnie that it would be very embarrassing should it become known that Carl had met his secretary on the day of her death. However, he said, the most important thing was obviously that Alice be acquitted.

The prosecution had known that Carl was not the father of Verona's child. The actual father, the mayor's son David, had admitted paternity. In fact, David had revealed that the last time that he had met with Verona he had told her to stop being a pest and to leave him alone. The mayor, who was in the midst of a difficult campaign in which

morality was a central issue, had applied a great deal of pressure on the prosecutor to keep his son's indiscretion secret.

Discuss all relevant issues, including any possible bases for appeal and any possible bases for the imposition of professional sanctions. The state of Columbia subscribes to the ABA Model Rules.

QUESTION 2

Paul Pro is the Chairman of the Board of Pro Enterprises, Inc., a publicly owned corporation, with corporate offices in Capania City, Capania. Paul is an extremely capable businessman in many respects. However, he treats his female subordinates badly -- sometimes by physically grabbing them and sometimes by making comments about their physical characteristics.

On April 1, Susan Secretary approached Lorna Lawyer to represent her in a sexual harassment suit to be brought against both Paul Pro and Pro Enterprises. Lorna was excited, she had been waiting for a long time to see that Paul Pro receive his due. Lorna worked out a contingency fee agreement with Susan whereby Lorna would get 1/3 (one third) of any settlement or award plus costs.

Lorna had once worked at Pro Enterprises as in-house counsel. She had discovered that the football helmets made by the company did not meet National Football League specifications. She had brought the matter to the attention of upper management, who had thanked her for her concern but had told her not to worry about the problem. After a professional football player been permanently paralyzed, arguably because of the faulty construction of the helmets, internal documents had been anonymously leaked to the press. It was never clear who in fact leaked the damaging information. However, Lorna had been summarily fired.

Paul Pro was livid when he learned of the suit on May 1. He called members of the legal department into his office and could barely control his anger when asking them what they were going to do about these ridiculous accusations against himself and against the company. Cory Counsel assured Paul that the legal department would take care of everything.

Lorna knew exactly who she should interview to find out what she needed to know. However, she figured that if she interviewed these individuals informally she would be much more likely to get the relevant information quickly. Much as she would have liked to have tried this case, she figured that she could get a quick and lucrative settlement for her client if she just could talk to a few key individuals. On June 1, Lorna called her friend Edward, Vice President in Charge of Employee Relations, to find out what she could about the practices of the organization. She also called some other friends to find out whether the sexual harassment was pervasive at Pro or whether Paul was the only person who engaged in such practices.

In the meantime, the legal department at Pro had been busy. They had made a motion to disqualify Lorna because she had once been an employee of Pro Enterprises. The motion was granted.

Cory Counsel was elated by the disqualification. He had always suspected that Lorna had leaked the football helmet information. He would have made a complaint to the

Disciplinary Board at the time if he could have established that she in fact had made the information public. He viewed her disqualification as a kind of just reward. He was almost gloating when he told his wife, Frieda Foote, about the disqualification over dinner.

Frieda was quite interested in the story. She had secretly been rooting for Lorna because she thought that Paul had to be taught a lesson. She decided that if Lorna was unable to represent Susan, then she, Frieda, was just the person to make sure that Susan was represented well. Frieda decided to pay Susan a visit.

The next day, Frieda went to Susan's apartment and rang the bell. Susan was home, trying to decide who to call now that Lorna could no longer represent her. Frieda explained why she was the woman for the job. Not only did she have extensive experience but she believed deeply in Susan's cause, not only for Susan herself but for other women who were subjected to harassment.

Susan explained that she appreciated Frieda's enthusiasm but that she was beginning to sour on the whole deal. She was having trouble getting another job and was running out of savings. Frieda explained that Susan did not have to worry. Frieda would advance her the costs of the litigation to be repaid out of the settlement. Further, Frieda would be willing to advance Susan spending money every so often if that became necessary. Of course, Susan would ultimately be responsible for any costs or loans. In addition to having these advanced monies repaid, Frieda would get 1/3 (one third) of any settlement or award. Susan, pleased that she didn't have to go through the time and effort of interviewing other attorneys and pleased that she would be able to continue the suit, agreed.

Frieda called Lorna and asked that Susan's file be sent. Lorna willingly complied in the hopes that Susan's case might thereby be bolstered.

When Frieda told Cory that she was now representing Susan, he was both angry and frightened. Paul Pro had not been in an especially good humor recently and Cory did not look forward to telling him of this recent development. However, Cory knew that he would lose his job if he didn't tell Paul who in fact was now representing Susan, so he talked to Paul the very next day.

To Cory's surprise, Paul was more than willing to have Frieda represent Susan, perhaps believing that he and Pro Enterprises would be well served by this arrangement. Both Paul and the Board gave their permission that Paul continue.

Frieda and Cory worked surprisingly well together as opposing counsel. There were no breaches of confidentiality. Within a relatively short period of time, they worked out a settlement which any reasonable person would have said was a good deal for all concerned parties. Perhaps surprisingly, all parties in fact agreed to the settlement.

Frieda was almost embarrassed to accept the 50K (\$50,000) which she had earned in addition to the monies she had advanced. Had she been charging by the hour, she would have earned 15K (plus the other monies). Susan was not particularly pleased to pay Frieda 50K either, arguing that 15K was a more appropriate figure.

Lorna has filed a lien against the settlement, since she too had been working on a contingency fee basis and since she had put in roughly the amount of time that Frieda had put in on the case.

Capania has incorporated the Model Code into the Capania Code of Professional Responsibility. You have been asked to write a memo discussing the professional responsibility implications raised by the actions of LORNA, CORY, and FRIEDA. Be sure to include how much, if anything, Lorna and Frieda should each be paid.