MEDICAL JURISPRUDENCE DECEMBER 6, 1989 FINAL EXAMINATION

Fall 1989

MR. TIBBLES

This is a take-home examination. Your paper must be returned to me personally and in person no later than 4:00 p.m. on Saturday December 23, 1989. There is to be no communication between students about the questions, answers, or research materials until after all papers have been submitted. Included in this prohibition are statements about the relevancy or irrelevancy of particular research materials to a particular question or issue.

Place your Examination Number, <u>NOT</u> your name on your paper. You should not have to spend more than 20 hours organizing and writing your examination. Time spent thinking or reading the questions does not count in this period; but time spent ordering, organizing, outlining, writing, editing, or typing does count.

Hopefully, the papers will be typed. If typed, the following margins are to be used: 70 space line, top margin of 9 vertical spaces, bottom margin of 6 vertical spaces, double spaced, 5 space indention for paragraphs. If handwritten, use lined paper 8 1/2 x 11 inches and write on every line. One side is one page. There is a page limitation for each answer. Please do not exceed this limitation. It is not necessary to have the papers professionally typed. You may keep the questions.

The casebook, class notes, materials handed out in class, materials On Reserve, and materials in our library should be sufficient to answer the questions. A question's value as a percentage of the entire examination is listed for each question. There are V. questions. Begin your answer of each question at the top of a new page.

If you have questions about the examination, please let me know as soon as possible so that I can make appropriate clarification. The questions will place you in a specific role, performing a specific function. Be true to your role and your assigned function. However, you should remember that the examination's primary function is to allow you to show me that you are familiar with and can use the materials that were assigned and/or discussed. I do not want merely a citation to material, although obviously I need some identification of the material upon which you rely so that I can check it if necessary. I do not want merely a summary of someone else's material. What I really want to see is your ability to use the material for your purposes. Have you made the material part of your experience so that it is available for you to use in your professional life?

The page limitation is severe. You will not have time for fancy introductions or idle musings. Every page, every paragraph, every sentence, and every word should be an essential thought conveyor.

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I. (20%) (4 typed pages; 6 written pages)

Appendix I contains the following materials: News Analysis "Rationing questions loom with Oregon plan," American Medical News, August 25, 1989; Letter-to-the-Editor, "Let people make their own decisions," American Medical News, November 24, 1989. You are my research assistant. I tell you that for next year's Medical Jurisprudence class I wish to formally prepare a set of class handouts of my own materials to supplement the present readings. I wish to include in this bound volume this article on Oregon's Medicaid law mandating health care rationing. AND I wish to include a textural note setting forth the relationship of the article and letter to all of the other assigned material in the class, especially the material about the transformation of American medicine. I want the note to show the reader any relevancy and relationship of the article and letter to the other assigned materials. I would like to have specific references to specific material where appropriate. SURPRISE, I want you to write the textural note for me.

Prepare the textural note. Remember to use your available space with utmost efficiency.

II. (20%) (4 typed pages; 6 written pages)

Appendix II contains the following material: Eric J. Cassell, Talking with Patients, "Introduction to Volume 1 The Theory of Doctor-Patient Communication" and "Introduction to Volume 2 Clinical Technique." You are a member of a group of young professionals--attorneys, physicians, dentists, nurses, allied health care personnel -- who meet regularly to discuss issues about professional education and practice (PEP). The group is also professionals all serving in how various interested client/patient (or one client family) can work with each other to best serve the interests of their mutual patient/client. group's president has assigned you to prepare a paper for the group's next meeting in which you discuss Dr. Cassell's material in light of the material covered in our Medical Jurisprudence class. She (the group is non-bigoted) asks you to make specific references to specific material where appropriate.

Prepare the paper. Remember to use your available space with utmost efficiency.

III. (20%) (4 typed pages; 6 written pages)

Appendix III contains the following material: Brody, "Transparency: Informed Consent in Primary Care," 19 Hastings Center Report 5 (#5 Sept./Oct. 1989). This journal is the nation's best multi-disciplinary journal dealing with bio-ethical issues. Hearing of you reputation, the editors of the Hastings Center Report have asked you to write a commentary of Brody's article to be published in a forthcoming issue of the Report. They ask that you use the materials from your Medical Jurisprudence class to critically assess Brody's article and assert your own view. The editors are particularly interested in whether Brody's model, or any model, is workable in practice, as well as in theory. They ask you to make specific references to specific material where appropriate.

Prepare your commentary. Remember to use your available space with utmost efficiency.

IV. (10%) (2 typed pages; 3 written pages)

Appendix IV contains the following material: "Case Studies Prehospital DNR Orders," 19 Hastings Center Report 17 (#6 November/December 1989).

- A. Assume the facts in the case study with the following addition: You are the family attorney for the husband and wife involved. Immediately after calling 911, the husband calls you. You arrive at the family's house at the same time as the paramedic ambulance crew. What could/would you have done?
- B. In light of this experience and the commentaries by Iserson and Rouse, what would be your legal advice to your other clients who may experience the same situation?
- c. What, if any, changes could/would you suggest in the legal and/or medical setting to handle this type of situation, which is becoming increasingly common?

V. (30%)

(6 typed pages; 9 written pages)
(2 & 3 additional pages of documents permitted)

On December 4, 1989, members of our law firm interviewed Mr. Marbury v. Madison. His "property estate planning" is being handled by others in the firm. Mr. Madison is domiciled in Ohio. His physicians' name is Dr. Gall Bladder. Mr. Madison is a 40 year old college counselor at a small college in central Ohio. He came

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to our law firm first for our services in estate planning, disposition of property, etc. These services have been rendered by others in the firm. He also has concerns about his making health care decisions in his later life.

Mr. Madison is particularly concerned about two family traits. On his father's side there is a history of Senile Dementia of the Alzheimer's Type (SDAT). The senility became apparent in his ancestors when they were in their late 40's; the senility continually increased and total inability to function independently occurred in their late 50's; death occurred in their late 60's.

On his mother's side there is a history of a specific type of cancer, for which chemotherapy is the only known treatment. The tumor became detectable in his ancestors when they were in their early to mid 50's. All of his ancestors who developed this cancer were given nine months of invasive chemotherapy, with all of its side effects. In seven of 10 ancestors, the chemotherapy caused the cancer to go into remission for three to 12 years. In all seven cases, the cancer reappeared and the ancestor died three to five years after the reappearance. The other three ancestors died within five years from the detection of the tumor.

All other information that we know about Mr. Madison comes from our interview with him. All students may use any information provided by Mr. Madison during the interview.

Once the interview was completed students could <u>NOT</u> communicate with other students about any part of this question, e.g., about what Mr. Madison said, what advice or documents might be appropriate, what materials should or should not be considered, etc., until all students have submitted their final examinations.

Mr. Madison has asked the firm to advise him about how medical care decisions may be made if he becomes incapable of participating in the decision-making. As senior partner, I have asked you as junior partners to prepare a memorandum that: (1) identifies all of the relevant Ohio case and statutory law as of December 4, 1989; (2) states what is likely to happen if and when physicians state that Mr. Madison has suffered irreversible cessation of all functions of the brain; (3) submits and evaluates options available to Mr. Madison, and (4) if your think it warranted, submits possible appropriate "operative provisions" to be included in appropriate legal documents, with explanations of their benefits inadequacies. The options and appropriate "operative provisions," must be drafted to meet Mr. Rose's particular circumstances. General pre-printed forms are insufficient. You may also identify areas in which you are unclear on the facts and would like additional information.

Prepare your memorandum and documents, if any. Remember to use your available space with utmost efficiency.

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Optional Extra Credit (5%) (1 typed page; 1 1\2 written pages)

Briefly describe and evaluate some part of the Ethics Conferences at Children's Hospital that you attended and that you believe will be beneficial to you as an attorney and as a person.

END OF EXAMINATION