

Professional Responsibility
Sections A & M
FINAL EXAMINATION
Mr. Tibbles
Fall Semester 1990

This is a take-home examination. Your paper must be returned to me personally and in person no later than 6:00 p.m. on Thursday December 20, 1990. 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, NOT 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, and 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 indentation for paragraphs. If handwritten, use lined paper 8 ½ 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.

If you use another person's ideas, opinions, recommendations, or thoughts, you must say "thank you" by giving proper attribution by footnote, endnote, or internal note. If you go further and use another person's words, you must place those words within quotation marks and give attribution. Common courtesy requires no less.

The casebook; the statutes, rules, and standards book; distributed materials; materials On Reserve; and materials in our library should be sufficient to respond to the questions. A question's value as a percentage of the entire examination is listed for each question. There are VI. questions. Begin your answer to 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. 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.

I. (15%)
(2 typed pages; 3 written pages)

Your state bar association is preparing a set of materials to be distributed to newly admitted members. An early essay in the materials is to be a brief history and critique of the 1908 ABA Canons of Ethics, the 1969 ABA Code of Professional Responsibility, and the 1983 ABA Model Rules of Professional Conduct. The project director asks you to prepare this history and critique with particular attention to what every lawyer should know about the history of these standards governing lawyer conduct.

Prepare your essay. If you use Wolfram, be careful to give proper attribution. Remember to use your available space with utmost efficiency.

II. (10%)
(1 typed page; 1 written page)

Professor Michael Distelhorst spoke to the class and written material "Substance Abuse in the Legal Profession," prepared for the Ohio State Bar Association, was distributed to class members.

1. According to Professor Distelhorst's material, what are the five principal characteristics of the disease of alcoholism?
2. According to Professor Distelhorst's material, what are nine diagnostic criteria of the disease of alcoholism?

III. (15%)
(1 typed page; 1 written page)

1. An early class handout contained an extensive excerpt from Frankena, Ethics, 2d Edition (1973). In that excerpt Professor Frankena, distinguishes three kinds of thinking that relate to morality. What are they?
2. Derek C. Bok, President of Harvard University and former Dean of Harvard Law School wrote an essay, "Can Ethics Be Taught?" 8 Change 26 (9 October 1976), which was included in a series of articles placed On Reserve for the Professional Responsibility classes. President Bok identified three objectives of courses in ethics. What are they?
3. In an early class meeting, the instructor presented several ideas of Professor Eliot Freidson, a sociologist, about the nature of professions. Complete the following statement: Professor Freidson's view is that a profession is an occupation that has assumed a dominant position in a division of labor, so that it has gained control over

IV. (15%)
(1 typed page; 1 written pages)

1. You are a general practitioner. Hal Hammer, who is retiring and moving out of state, asks you to handle the sale of his house. He has already sold his home improvement business. Hammer tells you some of the details of how he handled the sale of his business, asking you to hold this information in confidence. You agree. After you handle the closing of Hammer's house, he moves away.

Several months later, Garth Greenjeans tells you that he supplied Hammer with garden equipment for his business. Greenjeans claims that Hammer went out of business without paying him for \$3,000 worth of merchandise. Greenjeans wants you to handle his collection suit against Hammer. Are you permitted to do so under the Model Code or the Model Rules?

2. You are general counsel for Cook-out Corporation, which Mr. & Ms. Grill started as a family business. They eventually incorporated and, as the business expanded, the corporation became publicly held. As a result, Cook-out is now subject to the reporting requirements of the federal securities laws.

You researched these requirements and prepared a memorandum for senior management recommending that certain procedures be adopted to ensure compliance. These procedures were put into effect.

This week, while reviewing some recent correspondence, you find internal memoranda indicating that Cook-out's chief financial officer, Bean Counter, has failed to disclose certain information that must be disclosed under federal securities laws. The failure to disclose this information will likely result in substantial civil and possibly criminal liability for Cook-out.

You are fairly certain that Mr. & Ms. Grill, who presently serve on Cook-out's Board of Directors, are unaware of the situation. Under the Model Code or the Model Rules can you inform them?

V. (15%)
(1 typed page; 1 written pages)

One of the articles listed in the "ethics" handout and placed on Reserve for the Professional Responsibility classes is entitled "The Ethics of Teaching Ethics." The editor of the ABA Journal asks you to write a short review of this article. You are to clearly summarize the authors' conclusion and major supporting reasons, provide your own penetrating critique of author's conclusions and reasoning, and give your view of the applicability to legal education of the issues presented.

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

VI. (30%)
(3 typed pages; 4 written pages)

Turn to the Casebook page 429, Question 8.13.

1. Write your (perhaps tentative) statement of how you determine within the client-lawyer relationship what decisions should be made by the client and what decisions should be made by the lawyer. Assume that the client's goals are not criminal or fraudulent. Be as specific and definitive as you can.

2. Write your (perhaps tentative) statement of how you plan to resolve disagreements between the client and you, the lawyer, about what is in the client's best interests. Assume that the client's goals are not criminal or fraudulent. Be as specific and definitive as you can.

3. For each of the (7) hypothetical in Question 8.13 at Casebook pages 429-430, state as definitively as you can (a) exactly what you would do, (b) what are the key facts of each hypothetical that you think are important determinants of your action and that may distinguish the hypothetical from the other six hypothetical, and (c) how your proposed actions are all consistent applications of the principles that you stated in 1. and 2.

Remember to use your available space with utmost efficiency.