



The University of New Mexico

School of Law Library
MSC11 6080
1 University of New Mexico
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Telephone (505) 277-0939
FAX (505) 277-0068

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750-001 ETHICS
Spring Semester 2009

UNM School of Law
Final Examination

Professors Stout/Sanders
Three Credits

Examination Format

Essay Answers

Bluebooks for writing: write on every-other line and only on the front page of each sheet. On the front of bluebook record the class name, professor's name, date of exam, and your examination number. Make sure to number each bluebook in order. **DO NOT WRITE YOUR NAME ON BLUEBOOKS.**

Laptop (Typing) Exam:

1. Log off **all** programs that you are currently running or have opened!
2. Make sure you are connected to Lobo-Sec and have authenticated (entered your NetID and password).
3. Start the Exam4 program.
4. Make sure "Prepare to start new exam" is marked and click, "Next."
5. Enter your "Exam ID" number and confirm it.
6. Click the drop box next to "Course" and select "*(Insert info. from IT)*" and confirm. Click, "Next".
7. Optional choices screen: If you choose to change these options please do so. If not, click "Next".
8. Check the box marked "Got it" and click, "Next".
9. Type _____ for exam mode, check the box below that to confirm and click, "Next"
10. At this point Exam4 will indicate "**Wait!**" in the lower right side of the screen.
WAIT!
11. The proctor will tell you when to click "Begin Exam."
12. A "Security Check" to scan your computer will run. Please be patient. It should disappear within a short period of time. If not, please exit the room and see a proctor.
13. When beginning the exam, **TYPE THE NAME OF THE SUBJECT AND THE PROFESSOR'S NAME AT THE TOP OF THE PAGE** and proceed with your answer.
14. **WHEN STARTING A NEW EXAM TOPIC, go to the Tools menu above and select "insert answer divider" for a page break. Again, type in the name of the subject and the professor's name** and proceed with your answer.
15. Repeat number 13 of this process for each new exam topic.

ALL EXAM TAKERS

A **five-minute warning** will be given prior to the conclusion of the examination. When time is called, “**stop**” immediately.

Bluebook (Writers): At this point immediately stop writing, close all blue books, gather up any materials, and proceed to the check-in table in the Forum.

Laptop (Typers): At this point immediately stop typing and proceed to save the exam. Select **End Exam, End Exam Now** from the menu bar. Confirm that you want to end the exam. Select **Submit Electronically**.

- If the electronic submittal is **not successful**, close the window with the Red X and select File and Save Options. Select Exit (don't worry... the completed exam is saved to your hard drive).

In either case, exit the exam by selecting **File and Save Options, Exit**. If your exam was saved on the server, gather up any materials and proceed to the check-in table in the forum.

- *If the exam did not submit electronically*, reconnect to the Lobo-Sec network, making sure you authenticate (open a browser and put in your NetID).
- Start Exam4 again. Your exam is listed; choose **Select existing exam**, highlight the exam name, and click **Submit Electronically**. Click OK to accept the default Start Code. If the exam still did not submit electronically, contact an IT proctor.

Professor's Instructions:

This is a three-hour examination. The exam consists of six essay questions. The total number of points possible on the exam is 85. Each essay is worth 14 points—in other words each question is of equal weight so be sure to time yourself accordingly. You get one point for putting your exam number down correctly.

This exam is OPEN BOOK. You may refer to any print materials including your casebook, your rules book, your class notes, and your course outline. You may NOT use electronic databases.

In your answers, you are to apply the Model Rules and comments, cases, and ethics opinions to the facts and to provide references to and analysis of relevant provisions of the Model Rules and relevant case law and ethics opinions to demonstrate your reasoning and to support your conclusion. You may refer to the Restatement as you deem appropriate. Issues relating to attorney client privilege and/or attorney work product should be discussed with their pertinent authorities.

To receive full credit for each question, you must identify the correct rule and offer relevant language or a paraphrase of language from the rule or the rule comments, state a

definite conclusion or answer, and support your conclusion/answer through complete presentation of all steps in your reasoning and reference to relevant authority. References to case names and base rule numbers are sufficient as citation; reporter cites and rule subsections are not required. If you do not recall a rule number, you must specify the subject matter of the rule. In grading the exam we will also be looking for good organized analysis and presentation

Your answers are to be concise and directly relevant to the question asked or fact pattern provided. Rambling and imprecise answers will not receive full credit **Be sure to respond to the call of the question.**

Please use the following formatting for your answers. If handwritten, your answers are to be single-sided. If typed, your answers are to be single-sided and double-spaced with 1" margins at tops, bottoms and sides of pages. You are to return your exam questions with your answers.

[EXAM BEGINS ON THE NEXT PAGE]

QUESTION ONE

You are the ethics counsel for Shelton & Cadenas. It is your job to advise the firm on any ethics problems that it has, particularly conflicts problems. One of the firm's clients, Dori Hathaway, was hit by a bus while she was crossing the street. On her behalf, Shelton & Cadenas is suing the bus company. The firm has already put a lot of work into the case.

While that case was pending, Shelton & Cadenas agreed to represent another client, Kevin Bielaski, who is suing his wife for divorce. His wife is Dori Hathaway. Because Dori Hathaway has a different last name, the firm didn't realize that she is Bielaski's wife.

Kevin was not involved in the bus accident. Both Dori and Kevin want to go ahead with the divorce. They have no children, but they do have some property, and there may be a dispute about the property division. The lawyer handling the divorce has just discovered that Dori Hathaway is a client of the law firm. Your firm has signed contracts agreeing to represent Dori in the accident case and Kevin in the divorce case. What should you advise the firm to do?

QUESTION TWO

You are a criminal defense lawyer. Your client, Harry Norton, operated a small extermination business from the back of his truck. Harry mostly treated homes for termites, cockroaches, and rodent infestation. He has been charged with involuntary manslaughter based on the death of a four-year-old boy who died after eating rat poison.

that Harry had placed in the basement of the boy's home. The powerful rat poison that Harry had used in the home was intended only for industrial use because of the danger to humans who might ingest it. Harry is out on bail while the charge is pending.

You noticed that Harry seemed kind and well intentioned, but not very smart. Since he graduated from high school, you assume that his IQ is normal. During the first interview, now three months ago, you asked Harry whether he had put rat poison into other homes besides the one in which the child had died. Harry said he had. He wasn't sure how many other homes—perhaps 30 or 40. He said he had a file with records of the services he had provided to each customer. You urged Harry to go through the box and find all of the other homes where he had put that type of rat poison, and to revisit those homes and remove it. Harry has not gotten around to doing this. You have offered several times to help Harry go through the files, but Harry insisted that he would do it himself.

You considered trying to approach the prosecutor to arrange an exchange of the information about the location of the other rat poison for a promise that the prosecutor would not file additional charges against Harry based on that information or any further harm discovered as a result of the revelation. Harry has been unwilling to allow you even to mention the subject with the prosecutor. He keeps saying he will revisit his former customers and get the rat poison out of there.

The prosecutor has not sought a warrant for Harry's records on services provided to other customers. You do not understand why he has not. You are worried that Harry may try to "solve" this problem by destroying his records.

A criminal law in your state provides that “any person who recklessly engages in conduct that creates a substantial risk of death or serious physical injury to another person is guilty of the misdemeanor of reckless endangerment.”

What would you do? Explain and justify your decision with specific reference to the Model Rules that apply to these circumstances.

QUESTION THREE

You work in a small law firm and represent Frederic Krause in a divorce action against his wife, Maria. Maria’s lawyer has made a motion to suspend Frederic’s right to visit the couple’s three-year-old daughter, Darlene. Maria claims that Frederic uses methamphetamines. Under the law, a judge may suspend the visitation rights of any parent who currently uses illegal drugs.

The judge scheduled a hearing on Maria’s motion in five days. In preparing for the hearing, you asked Frederic whether he was using methamphetamines. He said that he did so at one time while living with Maria, but that he had not used this drug in more than four years. You advised him to get a drug test to prove that he was not using methamphetamines. Frederic then went to your town’s hospital and asked to have his urine tested for methamphetamines. He instructed the hospital to send the report on the drug test to you.

The hospital’s laboratory technician telephoned you and reported that Frederic tested negative for methamphetamines. However, the test screened for eight substances, and Frederic had tested positive for marijuana. She faxed you a copy of the printout.

There were no allegations of marijuana use in Frederic's legal case, so you told the technician that you needed a report showing only the methamphetamine results. You asked for a new test, for methamphetamines only. She said that she could do only a multi-substance screen, but that she could provide you with a second report, omitting the marijuana results. You asked her to do that. She mailed you part of the original printout. In comparing the report she mailed you with the technician's earlier fax, you saw that she had simply used a scissors to cut off the bottom portion of the original report and sent you only the top portion showing that your client tested negative for methamphetamines.

A. Now that you have received the partial report in the mail, would it be ethically proper for you to send a copy of it to Mrs. Krause's lawyer and then offer it as an exhibit that will be part of the evidence? Why or why not? Discuss in light of Model Rules and attorney-client privilege and attorney work product principles.

B. If you do decide to offer it into evidence and the Judge asks you "Is this the entire report?" How will you answer and why would you answer that way? Discuss in light of the applicable rules (Model or otherwise)

QUESTION FOUR

You are an attorney in Hobbs, New Mexico. You went to high school there before going to college and law school at UCLA. You returned to Hobbs three years ago in order to practice law with your mother. Shortly after your return to Hobbs, your best friend from high school, Juan Moya, contacted you about representing his family business, Moya Oil Rigs Inc. You agreed and have represented the business since then. Moya Oil Rigs has four shareholders. Juan's father, Luis, owns 52% of the shares and

Juan and his two brothers each have 16% of the shares. Juan came to you yesterday and mentioned to you that last week he had used money from the family business to pay your mutual friend, Bob Henry, who is the mayor of Hobbs, \$5000 so that Bob would funnel city business to Moya Oil Rigs Inc. In other words Juan and Bob entered into a “pay to play” arrangement. Juan has now learned that the conversation between him and Bob was overheard by another city worker who has reported it to the police. Juan wants you to represent him if he becomes involved in a criminal investigation. Nobody at Moya Oil Rigs, other than Juan, is aware of this deal yet. Can you represent Juan? What should you do, if anything? Why? Can you continue to represent Moya Oil Rigs if they become a target of a criminal investigation?

QUESTION FIVE

Client is advised by Accountant to consult a lawyer about a legal problem involving complex questions of tax accounting. Client, who does not fully understand the nature of the accounting questions, asks Accountant to accompany client to a consultation with Lawyer A so that Accountant can explain the nature of the Client’s legal matter to Lawyer A. In the course of the discussion between Client, Accountant and Lawyer A it becomes evident that Client has some serious federal tax liabilities. Lawyer A asks Accountant to prepare spreadsheets that will document these liabilities. Accountant prepares spread sheets and sends the spread sheets to Lawyer A with a copy to Client.

Client is sued in an unrelated matter involving other business issues. Client is being represented by your firm in this litigation. Lawyer A is not part of your firm. Client has advised you about Client’s interactions with Lawyer A and Accountant. In the

course of the litigation, Client is asked to produce any documents that relate to the calculation of tax liabilities and asked by interrogatory whether Client has had any discussion related to tax liabilities and if so, to identify the persons involved in those discussions. Your supervising partner wants to object to the discovery. Write a short memo explaining what objections you can make and the legal basis for those objections.

QUESTION SIX

Lawyer represents Plaintiff in a personal-injury action against Defendant. Because Lawyer fails to conduct an appropriate factual investigation, Lawyer includes a groundless claim in the complaint. Defendant incurred \$10,000 legal expenses in obtaining dismissal of this claim. The Court ordered the Plaintiff to pay defendant those \$10,000 in attorney's fees. Discuss the courses of action and remedies available to Plaintiff against Lawyer **and** what Rules of Professional Conduct are implicated. **Do not consider or discuss Rule 11.**

EXTRA CREDIT

- A. WHAT IS THE NAME OF THE LEADING NEW MEXICO CASE THAT DISCUSSES A LAWYER'S POTENTIAL LIABILITY TO THIRD PARTIES?

2. WHAT ARE THE FOUR THINGS YOU NEED TO KNOW TO PASS THE BAR?