



**The University of New Mexico**

---

School of Law Library  
MSC11 6080  
1 University of New Mexico  
Albuquerque, NM 87131-0001  
Telephone (505) 277-0939  
FAX (505) 277-0068

This document was scanned pursuant to the express permission of its author and rights holder.

The purpose of scanning this document was to make it available to University of New Mexico law students to assist them in their preparation and study for Law School exams.

This document is the property of the University of New Mexico School of Law. Downloading and printing is restricted to UNM Law School students. Printing and file sharing outside of the UNM Law School is strictly prohibited.

**NOTICE: WARNING CONCERNING COPYRIGHT RESTRICTIONS**

The copyright law of the United States (Title 17, United States Code) governs the making of photocopies or other reproductions of copyrighted material.

Under certain conditions specified in the law, libraries and archives are authorized to furnish a photocopy or other reproduction. One of these specified conditions is that the photocopy or reproduction is no to be "used for any purpose other that private study, scholarship, or research." If the user makes a request for, or later uses, a photocopy or reproduction for purposes in excess of "fair use," that user may be liable for copyright infringement.

This institution reserves the right to refuse to accept a copying order if, in its judgment, fulfillment of the order would involve violation of copyright law.

Exam No. \_\_\_\_\_

**750-001 Ethics**  
Spring 2013

**UNM School of Law**  
**Final Examination**

**Professor William Slease**  
**M: Apr. 29 & May 6, 2013**  
**8:30-11:30 a.m. (180 mins.)**

**Examination Format: Essay**

**Professor's Instructions**

This is a **three-hour limited open book** final examination. The exam consists of **8 pages and ends with the words "END OF EXAM."** **IF YOU DON'T HAVE ALL THREE QUESTIONS, AND ALL PAGES OF THE EXAM, ATTACHED, PLEASE NOTIFY THE PROCTOR IMMEDIATELY.** The total number of points possible on the exam is 75. Each essay is worth 25 points – in other words, each question is of equal weight so, time yourself accordingly.

You **may** refer to the ABA Model Rules of Professional Conduct as set forth in the supplement used in class; i.e. Gillers, Simon & Perlman, *Regulation of Lawyers: Statutes and Standards*, whether the full or concise edition. If you have a separate codification of the Rules, you may use that instead. Make sure it is up to date. You may tab and annotate the Rules. You may also use an outline prepared by you and your class notes.

You may **not** use any commercial outlines, hornbooks, flashcards or any other print or electronic materials or databases. You may **not** use any materials prepared by anyone other than you, including the TWEN PowerPoint slides I have posted. You **can** prepare your own outline or notes using the TWEN PowerPoint slides; you just **cannot** print the slides and use those as your own notes during the exam. You may not use your fellow students to help you during the exam.

Your answers should apply the ABA Model Rules of Professional Conduct, including any comments or cases you deem relevant, and you should demonstrate your reasoning to support your conclusions.

Full credit for any answer to a question requires that you identify the correct rules applicable to the question, offer relevant language from the Rules and any comment or case upon which you rely, state a definite conclusion or answer and support your conclusion/answer with a complete analysis, including your reasoning in reaching the conclusion/answer. Answers should be thorough, but concise and related to the question or fact pattern provided. **RESPOND TO THE CALL OF THE QUESTION.**

**The UNM School of Law Student Code of Conduct applies to this exam.**

## Essay Technical Instructions

### Technical Instructions:

Please use the following format in your answers. If your answers are handwritten, please double space and single side. If your answers are typed, please double space and single side with 1 inch margins on the top, bottom and both sides.

**Bluebooks:** Use black or blue ink pens, write on every other line and only on the front side of each page. On the front cover of each 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.**

**Laptops:** **Log off all programs.**

Start the Exam4 program

Make sure "Prepare to Start New Exam" is marked and click, "Next"

Enter your "Exam ID" number and confirm it.

Click the drop box next to "Course" and select your course and professor and confirm. Then Click "Next."

Optional choices screen: If you choose to change these options please do so. If not, Click "Next"

Notice you should not turn off or restart your computer before contacting a proctor. Check the box marked "Got it" and Click "Next"

Type "Closed" for exam mode, check the box below to confirm and Click "Next"

At this point, Exam4 will indicate "Wait!" in the lower right side of the screen.

**WAIT!**

The proctor will tell you when to click "Begin Exam"

A Security Check to scan your computer will run. Be patient. It should disappear fairly quickly. If not, find a proctor.

Using the Tools menu, select "Insert Answer Separation" for a page break.

**All Exam Takers**

If you have any questions or feel the need to explain/clarify your interpretation/understanding of the question being posed, please write them on the exam and DO NOT SIGN YOUR NAME

If you have an emergency, a procedural question, or any issue that occurs during the exam period and until final grades are posted, DO NOT CONTACT THE PROFESSOR. Instead, please contact the Proctor or the Registrar.

**YOU MAY NOT MAKE OR KEEP A COPY OF THIS EXAM. YOU MAY WRITE ON IT, UNDERLINE, HIGHLIGHT, ETC. DURING THE EXAM BUT YOU MUST TURN IT IN WITH YOUR ANSWER.**

A five-minute warning will be given prior to the conclusion of the examination. When time is called, STOP immediately. If you are using bluebooks, stop writing. If you are using a laptop, select “END EXAM, END EXAM NOW” from the menu bar. Confirm you want to end the exam and select “Submit Electronically.”

Follow any and all other instructions generated by the applicable program.

When you are finished, return your exam questions and your answers to the exam proctor.

**EXAM BEGINS ON THE NEXT PAGE**

### **Question 1.**

Arnie Attorney is in solo-practice and has, in the past, focused his work on the representation of individuals involved in high-dollar divorces. The jurisdiction in which Arnie practices is a “fault” jurisdiction for purposes of divorces meaning, among other things, that spousal misconduct is relevant to how assets are distributed. One of Arnie’s most memorable cases, which he completed approximately four years ago, involved a woman named Etta Round, a socialite that Arnie represented in a bitter and protracted divorce from her former spouse and in which Arnie was quite successful. Indeed, Etta obtained a settlement in the millions that Arnie helped her invest immediately after the divorce. Etta’s investments included the purchase of shares of a corporation, AA’s Shopping King, in which Arnie was the primary shareholder, CEO and Chair of the Board of Directors. AA’s Shopping King was in the process of developing a large shopping mall and Arnie convinced Etta that she had nothing but upside potential by investing her money in the project.

Alas, times have become somewhat tough for Arnie. In addition to the shopping mall not generating the income Arnie expected, there has been a trend towards collaborative divorces in Arnie’s jurisdiction. In a collaborative divorce, the parties tend to resolve their disputes more amicably and without the protracted litigation that Arnie formerly relied upon to earn high fees. Consequently, Arnie has begun looking for new work. Most recently he has tried to develop a plaintiff personal injury practice and a new case just walked in the door that Arnie thinks has great promise.

It seems that Alice Walker and her boyfriend Stan Smith were in a car on their way home from dinner one recent evening, with Alice driving, when Etta Round came barreling out of a side street in her Mercedes and, ignoring the stop sign, pulled directly in front of the Walker vehicle. It seems that Etta was intoxicated, having just learned of another negative cash flow report from the shopping mall in which she had invested. Inexplicably, Alice did not seem to see Etta’s car before the collision and failed to even try to brake. As a result, the law enforcement officer who investigated the accident issued citations to both Etta and Alice.

Alice and Stan interviewed a number of possible attorneys and settled on Arnie to pursue whatever claims each might have as a result of the accident. Arnie quickly agreed to undertake Alice’s and Stan’s representation, but when he recently discussed the entire matter, as described above, a friend told him he had some big problems.

Using the Model Rules of Professional Conduct, discuss any problems Arnie might have as a result of his representation of Etta, Alice and/or Stan.

[end of question 1]

## **Question 2.**

Louise Sketcher is a 25 year old competent woman who was recently arrested on two counts of forgery and one count of possession of a controlled substance. Louise's mother Grace went to lawyer Bonnie Ford to request that Bonnie represent Louise in the criminal matters. After reviewing the facts of the case, Bonnie quoted and Grace agreed that Grace would pay Bonnie a \$10,000 retainer to defend Louise through trial, and to provide Bonnie with an additional \$10,000 bonus if Louise is found not guilty. After reducing the agreement to a written contract, that Grace signed, Bonnie told Grace that Bonnie would enter her appearance, and file a plea of not guilty on behalf of Louise once Grace's retainer check cleared. The next morning, Bonnie took the check to the issuing bank, obtained a cashier's check and deposited the now certified funds into her operating account. Bonnie then prepared and filed her entry of appearance and a plea of not guilty on behalf of Louise.

Several days later, Louise calls Bonnie from the detention center to discuss the case. Bonnie confirms that she is, indeed, Louise's lawyer and tells her that she has entered an appearance on her behalf. Before she can say anything further, Louise tells Bonnie that Louise wants to plead guilty. She further advises Bonnie that she has a drug problem, but is not willing to enter treatment at this time, so any plea agreement should not include rehabilitation as a requirement. Bonnie tells Louise that it really would be in her best interest to enter rehab and that such an agreement would likely lessen any jail time that the court might otherwise impose. Bonnie then asks Louise to hold and Bonnie calls Grace on a second line so that the three of them can discuss this matter further. When Bonnie gets back on the line with Louise, she tells her that she has conferenced Grace into the call and wants to hear what Grace thinks about a plea. Grace tells Louise that Grace agrees that rehab was the best alternative if Louise intends to plead guilty. Otherwise, Grace insists to Bonnie that the matter proceed to trial on a not-guilty plea. Bonnie tells Louise to think about it, Louise confirms that she will do so, and the conversation with Louise is terminated. Before hanging up, Grace again tells Bonnie "Look, I'm paying here and I say either a plea that includes rehab or trial. Nothing else is acceptable."

Later that afternoon, the District Attorney calls Bonnie and offers Louise a plea that includes diversion into a drug rehab program and no jail time if the program is successfully completed. Bonnie immediately rejects the plea offer and tells the DA to prepare for trial. When Bonnie calls Grace to tell her that Grace might be needed as a witness at trial, Grace laments that no plea agreement could be worked out. Bonnie casually mentions that the DA did offer a plea, but because it involved rehab, which Louise had previously rejected, Bonnie immediately rejected the plea. Outraged, Grace filed a complaint with the local disciplinary authorities and sent Bonnie a copy, demanding a full refund of the \$10,000 retainer and an accounting of time Bonnie spent on the matter.

[question 2 continues on next page]

When Bonnie learned of the complaint, she called Louise and Grace, told them she was no longer willing to represent Louise, she was withdrawing immediately, and she would not be refunding any money.

When Louise asked if Grace would be appearing for Louise's bond reduction hearing the next morning, Bonnie just laughed and hung up the phone. Bonnie did not appear at the hearing the next day.

Using the Model Rules of Professional Conduct, discuss the Rules that the disciplinary authority should consider alleging that Bonnie has violated.

[end of question 2]

### **Question 3.**

Robert Libble was early in his career as a lawyer. He just undertook the representation of Red Eye Subs, a fast food chain that specialized in late night service for the bar crowd. Red Eye had been sued by Wylie Adams, a Red Eye employee, who claimed he had been beaten by a fellow Red Eye employee, Bill Angerst during an argument over the amount of meat that Angerst had placed in a sub for a customer. According to Wylie, Angerst seemed to just “loose it” when Wylie complained that Angerst had not put enough pepperoni on the customer’s Italian sub special. Wylie claimed that Angerst was well known to Red Eye employees and customers alike as having a short temper. Wylie was certain that Wylie was not the first employee or customer who complained about Angerst or who had suffered his wrath.

Howard Lyman represented Wylie in the suit against Red Eye. For strategic reasons, Lyman decided not to sue Angerst but instead focused his theory on Red Eye. Specifically, in order to avoid the exclusivity provisions of the jurisdiction’s workers’ compensation laws, Lyman had to demonstrate that Red Eye created an unsafe environment for employees by continuing to employ Angerst when it was well know he was a safety risk to everyone in the restaurant. Lyman knew that to succeed with this theory, he would need to show a long history of violence by Angerst at work, that Red Eye was aware of the history and that it did nothing about Angerst. This would require some serious discovery.

Unsurprisingly, Lyman’s first set of interrogatories and requests for production were heavy with questions and requests seeking information and documents on Angerst’s employment history. Upon receipt of the interrogatories and requests, Libble sent them to Red Eye. Among other things the interrogatories asked for any other incidents in which Angerst was violent at work and the requests asked for his personnel file. In response, Red Eye told Libble that none of the present management team at the relevant Red Eye site, nor any present supervisor, knew of any prior incidents involving Angerst while on duty. Red Eye failed to mention that it had a new management team at the site and that the prior team knew of at least six (6) prior violent outbursts by Angerst, including one in which Angerst punched a fellow employee in the back of the head for criticizing the way Angerst sliced the sub rolls. Likewise, Red Eye failed to mention that the present management team knew of at least one (1) incident in which Angerst confronted a customer in the parking lot of the restaurant immediately after Angerst’s shift ended.

Red Eye also gave Libble a file for production labeled “Angrest Official Personnel File.” Red Eye failed, however, to give Libble Angerst’s discipline file and the “supervisor’s working file” maintained by his former supervisor that documented an extensive history of violent outbursts by Angerst.

[question 3 continues on next page]



Without further inquiry, Libble faithfully served Red Eye's answers and documents to Lyman in a timely manner. At the same time, Libble served a motion for summary judgment that included an affidavit from Angerst attesting that Angerst had never before been involved in a violent confrontation with any co-worker or customer of Red Eye.

After a week or two had passed, one of Red Eye's executives, Samantha Clean, began to have pangs of concern over Red Eye's answers and responses, as well as Angerst's affidavit. Late one afternoon, she called Libble and asked if she could stop by his office to talk about the case. Libble agreed and when Clean arrived, she detailed all of Angerst's actions in a memo that she gave to Libble, along with a copy of Angerst's discipline and supervisor files. Shaken, Libble called the Red Eye President Bob Oak and told him of Clean's visit. "You work for me son. I am Red Eye. If you ever want to see another dime of work in this town, you better forget the visit with Clean and run those documents through the shredder. Besides, Lyman didn't ask the right questions so you don't need to go help him make a case." Libble did as he was told and continued to press forward with the pending motion for summary judgment, including presenting oral argument to the court in support of the motion.

Angry at Clean for her actions, Oak put Clean on a six-week suspension for being "insubordinate." One week into Clean's suspension, Lyman ran into Clean at a local bakery. After the two exchanged pleasantries, Clean brought up the lawsuit Lyman filed on behalf of Wylie against Red Eye. "How goes discovery?" Clean asked. "Not so hot" Lyman responded. "It looks like this was a one-time deal for Angerst and we might get poured out on summary judgment on our 'dangerous environment' theory" Lyman lamented. "Don't be so sure" Clean offered. "Maybe you should set my deposition and ask the right questions" Clean continued. "Will do" Lyman said excitedly.

Discuss what Model Rules of Professional Conduct both Libble and Lyman may have violated.

[end of question 3]

**END OF EXAM**