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**750 ETHICS  
Spring Semester, 2000**

**PART II**

Final Examination  
UNM School of Law  
Three Credits

Professor M. Browde  
May 3 or May 12, 2000  
9:00 a.m. to 12 noon

**INSTRUCTIONS**

1. This is Part II of the examination, to be given to you only after you have completed and turned in Part I.
2. This Part of the exam consists of 2 essay questions drawn from the pre-assigned problems from the casebook. It represents 50% of your final grade.
2. You have 1 and ½ hours to complete this portion of the exam.
3. It is a closed book examination.
4. Be sure to place your examination number at the top of this first page of the examination and hand in this portion of the examination with your answer sheet.
5. Record your answer in a blue book, or if you type, on appropriate typing paper.

[PART II OF EXAM BEGINS ON PAGE 2]

**QUESTION 1**  
**“The Insurer Would Want to Know”**

“This gets a little complicated so take notes. Our client is a lawyer, Ben Welcome, who was hired by an insurance company to defend its insured, which is a law firm that I’ll call by its acronym, RIO, and one of its partners, Meredith Tipton. The case is for legal malpractice. The plaintiff, Spindlecraft, is a maker of hobby materials. Tipton had represented Spindlecraft in various transactional matters—negotiations of contracts and the like—which Spindlecraft says Tipton messed up, causing it to lose some business opportunities, etcetera etcetera. The complaint alleges negligence and seeks \$10 million, which is less than the policy limits. The insurer hired Welcome, who appeared for both defendants.

“According to Ben, he came across some information about Tipton’s activities that he didn’t understand. So he asked her about it. It turns out that Tipton didn’t just mess up. She practically sabotaged Spindlecraft’s objectives because she had a client who would have lost a lot of money if Spindlecraft succeeded. Tipton told Welcome he couldn’t reveal her complicity to anybody. This was two days ago.

“Ben hasn’t done anything yet. He wants our advice yesterday. Can he or must he tell the law firm or the insurer anything and if so, what? Ben told me that he thinks that if the law firm finds out, it would not want the insurer to know because its policy does not cover intentional wrongdoing. But the firm and its partners would be vicariously liable for Tipton’s conduct. So whatever judgment Tipton couldn’t pay, including punitives (and she’s not wealthy), her partners would have to. Ben figures, if possible, the firm would want to get the insurer to settle without knowing what Tipton did.

**Advise Ben, and in the process explain fully all of the ethical problems involved.**

**QUESTION 2**  
**“Accept the Offer”**

“I do matrimonial work, and as these things happen most of my clients are wives. Aside from custody issues, I have one main objective for my client: money. In 26 years at this business, I know that the one thing my clients always regret if they regret anything is that they didn’t get enough (if they’re women) or they agreed to give too much (men). Whatever they think at the time, if there’s disappointment later, it’s about money. The client I wanted to ask you about is someone I’ll call Chloe, who was married to Russell for 20 years and then fell out of love or decided she was never in it and had only married him because she thought her mother wanted her to. They have two children.

“Russell made a low-ball offer, in the ballpark for first offers but low and obviously an invitation for a counteroffer. I presented the offer to Chloe because I’m supposed to and told her not to be offended it’s so low, because first offers are low and this one isn’t any lower than most. What she said next blew me away. ‘Greg, I want you to take it.’ She doesn’t want to negotiate, not even if she assumes—as I told her based on my experience she should—that I can get another \$250,000 on the property division and \$35,000 a year more on the support just with a phone call—and she’d still be getting too little! She said she feels bad enough about what she’s doing to Russell, she feels that his offer is an amount she can live with, and she doesn’t want to bargain or do anything to create further ill feeling. I’ve been back to her several times on this, but she insists. I know to a moral certainty that she’s going to regret this within six months, when it’ll be too late. Her quality of life will change dramatically.

“I’ve had this happen to me before—women who want little or nothing, men who want to give away the store, both operating from guilt—but always I’ve been able to talk them out of it. With Chloe, it doesn’t look like it.”

**Explain the ethical duties and liability issues involved, and how you would resolve them in this case. In the process, explain what you would do if Chloe insists on her position, and justify it by reference to your theory of the proper role of the lawyer.**

[END OF PART II OF THE EXAMINATION]