

**750 ETHICS
Spring Semester, 2004**

PART I

Final Examination
UNM School of Law
Three Credits

Professor M. Browde
May 5 or May 13, 2004
9:00 a.m. to 12 noon (approx.)

INSTRUCTIONS

1. This is Part I of the examination. It consists of 50 Multiple Choice questions which seek to replicate the national MPRE examination. It represents 50% of your final grade.
2. You have 1 and ½ hours to complete this portion of the exam, and it must be completed and returned to the proctors in the forum before you will be given Part II. If you do finish this part early and turn it in, you will have to wait in the forum until Part II is distributed at approximately 10:30 a.m.
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. Use the multiple choice answer sheet provided. Use a No. 2 pencil to fill in the answer sheet, and be sure to fill in your exam number as shown in the example below. If your exam number is only one or two digits, place one or two zeros in front of the number to make it a three digit number. Do not fill in any other identifying information on the answer sheet.

(Please do not use the sample examination number.)

BIRTH DATE			IDENTIFICATION NUMBER										SPECIAL CODES					
MO.	DAY	YR.	A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P
Leave Blank			0	9	4								Leave Blank					

6. Please read each and every question very carefully. Some of the Multiple Choice questions may be similar to ones you have seen in practice questions generally available to you, but if so, they have probably undergone some subtle changes.
7. By 10:30 a.m. you must complete this portion of the exam and return it to the proctors in the forum. You will then be given Part II.

[PART I OF EXAM BEGINS ON PAGE 2]

Exam No. _____

**750 ETHICS
Spring Semester, 2004**

PART II

Final Examination
UNM School of Law
Three Credits

Professor M. Browde
May 5 or May 13, 2000
9:00 a.m. to 12 noon (approx.)

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 3 essay questions drawn from the pre-assigned problems from the casebook. The questions will be weighted equally, and this Part of the exam represents 50% of your final grade.
2. You have 1 and ½ hours to complete this portion of the exam, and the time will be computed from when the proctors begin Part II.
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

Edith Walton, shopping in Tracy's Department Store, slipped in the third floor timepiece department and broke her hip. She sued, alleging that the floor was excessively waxed. Under store policy, whenever someone is injured in the store, the General Counsel's Office will oversee an investigation. An hour after the fall, Wilma Barker, an assistant GC, asked Mike Todd in security to interview any witnesses. Todd interviewed (a) Max Burkow, head of maintenance; (b) Tim Miglio, who last waxed the floor; (c) Tina Sandstrom, a salesperson in men's furnishings who was working behind a nearby counter; (d) Rex McCormick, a buyer in the rug department who, though off work that day, had come to the store to do personal shopping; and (e) Angie Kuhl, who was buying a watch for her father. Miglio and Burkow did not see Walton fall. The others did. Todd wrote up the interviews and gave his memos to Barker.

Cora Lundquist, Walton's lawyer, noticed the deposition of each of the five people Todd interviewed. She asked Burkow about maintenance procedures. She asked Miglio about procedures in waxing floors generally and on this occasion. She asked the others what they remembered of the incident. Each witness had some memory failure. Lundquist demanded production of Todd's memos, and Barker asserted attorney-client and work-product privileges.

a. What result under *Upjohn* and Federal Rule 26(b)(3)?

If instead of formal discovery, Cora Lundquist, the plaintiff's lawyer, wanted to interview the same individuals that Todd interviewed . . .

b. Does the "no-contact" rule prevent her from conducting informal interviews with Todd and any or all of the witnesses without first seeking opposing counsel's permission? How, if at all, would your answer change if any of the witnesses who were employees of Tracy's had resigned prior to any Lundquist interview? Explain fully.

QUESTION 2

"I have a solo practice in a small city. Mariah Gello. That's a hard 'G'. Rhymes with Mellow. Nice to meet you. I do work for small companies. Tax. Corporate. Employment. One thing I really enjoy is startups, a young person usually with an idea and a lot of energy and determination but not so much money. They want advice—how to get started, should they incorporate, taxes, negotiate a lease, raise capital, trade name. I love this. They really believe in themselves, figure they'll be the next Bill Gates, whatever. I try to help, don't charge a whole lot. I figure if they survive, I have a good client, and some do survive though none has started a Microsoft.

“Yesterday, I read an article in the state bar journal. Conflicts. Written by some law professor who never had a client. But it got me nervous. Some of the startups are two, three, four people. This law professor says I need a consent. And meanwhile, a day earlier, I had some new clients come in, three nice people who want to start a partnership that will run birthday parties for children. One’s a magician. One’s a baker and makes the birthday cake with the children. One does a thing with puppets I’m not too clear about. And they all play music. They hope eventually to hire people with other talents and offer various packages to parents.

The Magician is going to put up most of the money. The baker has most of the contacts because she has been baking for children’s parties for a long time. The puppeteer is going to handle the management.

“But now I learn I need a letter saying they consent to the conflict, whatever conflict that is. I was told you could draft one for me.”

Please draft the client consent form, explaining the reasons for its essential provisions.

QUESTION 3

“I have a client, I’ll call him Klunk, a general contractor, who builds low-end homes in new developments. He’s done a lot of work in the county and adjoining counties. Every time he does a new development, I prepare a master contract. It includes various warranties. For his current development, Birchwood, the contract warrants that all building materials will be up to code. Klunk’s salespeople then use a form based on the master contract every time they sell a house. In my current work on Birchwood I have nothing to do with sales or customers. So far as the purchaser knows, I don’t exist.

“When Klunk filed the plan for the development with the State Department of Real Estate Development, he needed a lawyer’s certification that the plan complied with all state land use and environmental laws. I did that because it did. This was before the building started. At the same time, I certified to the lending banks that Klunk’s company was duly formed, not in violation of any laws, and not in breach of any contracts. All that was true at the time.

“Birchwood is being built in four phases, about 100 homes in each phase. Toward the end of Phase I, Klunk discovered that the plumbing contractor was using substandard plumbing lines, which violate the building code and can be expected to corrode and leak within a couple of years. Klunk asked my advice. I told him that he should make the plumber redo the installation and that he might be able to sue the plumber for damages.

“The next day, Klunk told me that he was changing plumbing contractors and expected no problems with future homes. But he was not going to rip out the pipes in the completed homes, some of which have been sold. If leaks develop, he said, he will take care of it then. He is afraid that if he starts ripping out pipes, the whole project will get a bad reputation. Pending sales will be lost and new sales will be hard to make. He told me that about two dozen homes in Phase I have the substandard lines.

Please explain what the lawyer should do, and why.

[END OF PART II OF THE EXAMINATION]